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INTERNATIONAL JOINT COMMISSION

IN THE MATTER OF

THE APPLICATION OF THE WATROUS ISLAND BOOM CO. FOR APPROVAL OF PLANS FOR BOOM IN RAINY RIVER

DECISION AND ORDER OF APPROVAL

WASHINGTON
GOVERNMENT PRINTING OFFICE
1918

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INTERNATIONAL JOINT COMMISSION.

UNITED STATES.	CANADA.
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International Joint Commission.

IN THE MATTER OF AN APPLICATION OF WATROUS ISLAND BOOM COMPANY FOR APPROVAL OF PLANS FOR BOOM IN RAINY RIVER.

DECISION AND ORDER OF APPROVAL.

Filed October 13, 1913, at Washington and Ottawa.

At a special meeting of the commission, held in the city of Montreal, at the courthouse, in the Court of King's Bench, appeal side, on the 2d day of September, 1913, the committee, consisting of Messrs. Casgrain and Tawney, to whom was referred the application in this matter, submitted the following report, together with all the evidence and exhibits taken by them in accordance with the order of the commission at International Falls, Minn., to wit:

On the 2d day of April, 1913, the following order was made:

Ordered, That questions growing out of the application of the Watrous Island Boom Co. for approval of its plans for the construction of a boom in the Rainy River be referred to two members of the commission to investigate, and, if in their opinion desirable, to take such testimony as they may consider necessary to be laid before the commission for its final determination of the question whether such application should be approved in whole or in part; and to fully report the facts, together with such evidence as may be taken to the commission as soon as may be; and that the further consideration of the application be continued to a date to be fixed by the chairmen.

Ordered, That Mr. Tawney and Mr. Casgrain be appointed to act under the foregoing order.

In pursuance of the above-recited order the undersigned met at International Falls, Minn., and on the 5th of May

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proceeded to carry out the instructions of the commission. The application is in the following terms:

To the Honorable, the International Joint Commission, Washington, D. C., and Ottawa, Canada, the Secretary of State, and the Secretary of War of the United States, Washington, D. C.

GENTLEMEN: The undersigned, Watrous Island Boom Co., a corporation organized under the laws of the State of Minnesota for the purpose of improving Rainy River on the northern boundary of the State, and its tributaries, including, among others Winter Road, Beaudette, Rapids, Black, Big Fork, Little Fork, Ash, Vermillion, and Namakan Rivers, and their tributaries, and the driving of logs therein, or in any portion thereof, and the improvement of such streams and tributaries by clearing and straightening the channels thereof, closing sloughs, directing sluiceways, booms of all kinds, side rolling, sluicing and flooding dams, or otherwise, and keeping such works in repair and operating the same so as to render driving logs in such streams and tributaries reasonably practicable and certain and charging and collecting reasonable and uniform tolls upon all logs, lumber, and timber driven, sluiced, or floated on the said streams or any thereof; also taking possession of all logs put in such streams, and upon such rollways, and breaking the rollways and driving the logs, lumber, and timber; and also driving any and all logs and timber at the request of the owner or owners, which may be put into said streams or any thereof, and taking charge of same and driving the same down and out of such streams or down so far as the improvements of the company may extend; and charging and collecting therefor of the owner or party controlling said logs or timber reasonable charges and expenses for such services; also buying, selling, and using all property, real and personal, necessary or convenient for its purposes, herewith submits plans for booms in Rainy River between the mouth of Little Fork River and the mouth of Black River, for storing, handling, sorting, and loading logs and forest products, and respectfully requests approval of such plans.

Appended to this application and printed herewith are:

1. A copy of the articles of incorporation of Watrous Island Boom Co.

2. The necessary duplicates and copies of this application required by the rules of the International Joint Commission and the Department of War, as well as the plans of the boom and surveys and soundings of the adjacent waters.

Respectfully submitted.

WATROUS ISLAND BOOM CO.,
By EDWARD WELLINGTON BACKUS,
President.

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This application was filed in Washington and in Ottawa in April, 1912.

On or about the 13th of November, 1912, Mr. John Thompson, acting for the attorney general for the Dominion of Canada, filed a reply or statement in response to the application, as follows:

To the honorable the International Joint Commission, Ottawa, Canada, and Washington, D. C.

GENTLEMEN: The Government of the Dominion of Canada in response to the above application submits the following:

1. The plans submitted by the applicants do not show the true location of the piles and the proposed boom. The true location is shown on the plan prepared by the public works department of Canada, which is filed herewith. It shows that the proposed boom crosses and recrosses the Rainy River.

2. The international boundary line in the Rainy River has not been fixed, and until this has been done it can not be ascertained to which jurisdiction the applicants are subject.

3. On the plan prepared by the department of public works it is shown that pile driving has already been done and that the piles are not in the position shown on the plans submitted by the applicants. For example, at Laurel, a small wharf 3,000 feet east of Big Fork River, the applicants' plan shows the piles running to the wharf, but on the plan of the department of public works the boom is 300 feet from the wharf.

4. From the meager soundings shown on the various plans of the river it is impossible to say where the boom should be placed in the interest both of navigation and of the applicants.

5. Steamers using the north side of the river are obliged to make frequent stops to land and take off passengers by running the bow of the vessels on the shore, and this must be done with the bow upstream. In many places the boom is so close to the north shore that a vessel going downstream has not room to turn in order to make a landing. This is shown on the plan of the department of public works.

6. At the present time steamers can not use the river exclusively on the north side of the piles, and the Canadian Government submits that judgment should be withheld until a survey of the river has been made to determine whether or not steamers can use the north half of the river.

7. The plan filed by the applicants shows that an 8-foot channel is to be dredged below Big Fork River. This will alter the natural level and flow of the water, and the extent to which the natural flow will be affected should be first determined.

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8. There should be some rule as to what procedure is to be adopted to have the river cleared sufficiently for safe navigation.

9. It should be possible to allow the applicants privileges in the river so as not to unduly interfere with navigation.

Dated at Ottawa, the 13th day of November, 1912.

The approval of the United States Government, dated April 3, 1912, of the plans submitted by the company is in the following terms:

Whereas by section 10 of an act of Congress approved March 3, 1899, entitled "An act making appropriations for the construction, repair, and preservation of certain public works on rivers and harbors and for other purposes," it is provided that it shall not be lawful to build or commence the building of any wharf, pier, dolphin, boom, weir, breakwater, buklhead, jetty, or other structures in any port, roadstead, haven, harbor, canal, navigable river, or other water of the United States, outside established harbor lines, or where no harbor lines have been established, except on plans recommended by the Chief of Engineers and authorized by the Secretary of War; and it shall not be lawful to excavate or fill, or in any manner to alter or modify the course, location, condition, or capacity of, any port, roadstead, haven, harbor, canal, lake, harbor of refuge, or inclosure within the limits of any breakwater, or of the channel of any navigable water of the United States, unless the work has been recommended by the Chief of Engineers, and authorized by the Secretary of War prior to beginning the same; and

Whereas the Watrous Island Boom Co., a corporation organized under the laws of the State of Minnesota, has applied to the Secretary of War for the approval of plans, hereto attached, for booms in Rainy River, between the mouth of Little Fork River and the mouth of Black River, in the State of Minnesota, for storing, handling, sorting, and loading logs and forest products, which plans have been recommended by the Chief of Engineers.

Now, therefore, this is to certify that the Secretary of War hereby gives permission to the said Watrous Island Boom Co. to construct booms and to dredge in the said Rainy River, as shown upon said plans, so far as the said booms and dredging affect navigable waters of the United States, subject to approval by the International Joint Commission and of such conditions not concerning the interests of navigation which the said commission may prescribe, and subject to further conditions as follows:

1. That the work herein permitted to be done shall be subject to the supervision and approval of the engineer officer of the United States Army in charge of the locality.

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2. That if at any time in the future it shall be made to appear to the Secretary of War that the structures herein authorized are unreasonable obstructions to the free navigation of said waters, said licensee will be required, upon due notice from the Secretary of War, to remove or alter the same so as to render navigation through said waters reasonably free, easy, and unobstructed.

3. That the work is to be executed as shown upon the plan hereto attached.

4. That where the navigable channel is inclosed in the boom, a channel 200 feet wide and 8 feet deep at mean low water shall be dredged outside the boom for the accommodation of boats.

5. That all work, except dredging, shall be completed before the opening of the navigation season of 1912.

6. That all dredging shall be completed before the end of the navigation season of 1912.

It is understood that this instrument simply gives permission under said act of Congress to do the work herein authorized; that it does not give any property rights, and does not authorize any injury to private property or invasion of private rights.

From the statement in response or reply, on behalf of the Dominion Government, it will be seen that no plans have yet received the approval of the department of public works. Until this approval is given, the construction, erection, or maintaining of any boom in the Rainy River, which is a navigable river, is illegal.

The act "Respecting the protection of navigable waters," being chapter 115 of the Revised Statutes of Canada, section 4, says:

No bridge, boom, dam, or aboiteau shall be constructed so as to interfere with navigation, unless the site thereof has been approved by the governor in council, nor unless such boom, dam, or aboiteau is built and maintained in accordance with plans approved by the governor in council.

Pursuant to notices which had been given to all the interested parties, the undersigned, on the morning of 5th May, in company with the following, proceeded down the Rainy River as far as the Long Sault Rapids:

C. J. Rockwood, representing Watrous Island Boom Co.

E. W. Backus, president of the Watrous Island Boom Co., and of other interested companies.

J. T. Horne, representing the Rainy River Navigation Co. and the Western Canal Co.

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Capt. J. Black, master of the steamer *Agwinde*, belonging to the Rainy River Navigation Co.

C. S. Giles, C. E., engineer in charge of the works of the Watrous Island Boom Co.

Col. Charles L. Potter, United States Corps of Engineers.

D. W. Jamieson, resident engineer of the department of public works of Canada at Fort Frances.

Samuel J. Chapleau, principal assistant engineer, department of public works of Canada, the engineer in charge of the works on the Rainy River, who was to meet the undersigned at International Falls, was on his way, but owing to unforeseen circumstances only arrived the next day.

The undersigned had with them a blue-print plan of the boom, which was afterwards filed as Exhibit "A" and which, it was stated to them by Mr. Rockwood, had been forwarded to the secretaries of the commission, in conformity with the order of the commission issued at Washington on April 2 last. The undersigned had also a sketch map or tracing showing the changes in the boom, which had been recommended by the department of public works.

The undersigned, accompanied by the foregoing, followed the boom down the river from the mouth of the Little Fork River to the mouth of the Black River, the progress on the river being followed step by step on the plan "A," which appeared to the undersigned to be a correct representation of the boom as constructed.

Mr. Giles gave all the information required, and Capt. Black pointed out several places where, in his opinion, navigation was obstructed by the works. The undersigned noted on the plan and on the river three places, hereinafter more particularly referred to, where the boom seemed to interfere with navigation. Capt. Black, however, admitted that several important changes had been made in the boom and some of the worst objections removed.

The boom extends from Little Fork River to the mouth of Black River, a distance of a little over 10 miles, and follows the American shore. In some instances it extends out to the middle of the stream and in a few places beyond the center. The boundary line has not yet been settled in that

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part of Rainy River, but from observation the undersigned are able to say that whether the boundary line follows the middle of the stream or the middle of the channel the boom is almost wholly constructed in American territory. At one place it will be necessary to dredge a new channel 2,800 feet in length by 50 feet in width and 8 feet in depth. This dredging, as shown on the map, forms part of the plan to be approved. The boom as constructed consists of 198 clusters of 3 to 9 piles, driven at distances of 100 to 200 feet apart, which clusters are connected by ordinary boom sticks.

On the 6th May at 10 a. m. the undersigned, being of opinion that it was desirable to take testimony, opened the hearing in the Koochiching County courthouse at International Falls. All the parties who were present the preceding day and hereinbefore mentioned appeared, with the addition of Mr. George A. Graham, representing the Rainy River Navigation Co., and Mr. Samuel J. Chapleau. The following were sworn and gave their testimony: G. S. Giles, E. W. Backus, Col. Potter, Samuel J. Chapleau, Capt. Black, and Fred Smith, of Laurel, Minn.

The following is a synopsis of the essential parts of the evidence:

The object of the boom is to collect, handle, and sort timber which is driven down the Big Fork, Little Fork, and Black Rivers. This timber consists of pulp wood for the mills at International Falls and Fort Frances, belonging to and operated by the Ontario & Minnesota Power Co., of which Mr. Backus is the president, and the logs for the following sawmills: One mill of the International Lumber Co. at International Falls, one mill at Spooner, Minn., and one mill at Keewatin, Ontario, belonging to the Keewatin Lumber Co., all of which belong to or are controlled by the Backus interests.

The mill of the Engler Lumber Co. and of the Rat Portage Lumber Co. and of divers similar mills on the Rainy River, all belong to independent companies and stationed below the boom.

At a previous hearing at International Falls on the 17th of September, 1912, another company operating a mill at

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Spooner, the Shevlin-Mathieu Lumber Co., was represented by counsel, but this mill was subsequently purchased by the Backus interests.

In his testimony Mr. Backus gave the following information:

The reasonably full capacity of the mills of the International Lumber Co. is approximately 200,000,000 feet of sawed lumber per annum. There would be cut this year at International Falls 80,000,000 feet of lumber, at Spooner 60,000,000, and at Keewatin 40,000,000. Besides this, the consumption of pulp wood for the pulp mills at International Falls and Fort Frances is at their present capacity 160,000 cords per annum. This wood is brought in from various directions by all the railroads entering International Falls, and also a large portion is put into the streams, the Little Fork, Big Fork, and Black Rivers, and driven into the Watrous Island Boom Co.'s boom and there hoisted and brought back by rail.

The method of handling this boom is to bring all of the logs and pulp wood into the boom, take out all the pulp wood, if possible, and what logs are necessary to come to International Falls sawmill and haul them back by rail to the mills at International Falls and Fort Frances, both sawmills and pulp mills. The logs belonging to the mills lower down the river are then released and they float down to the other mills.

There is other timber collected in the boom, such as ties, cedar poles and posts, which come down these rivers and after being released go down the Rainy River to a point lower down than the end of the boom. Mr. Backus estimated the total number of feet of logs for the collecting and sorting of which the boom was used at an average of 125,000,000 feet of saw logs and approximately 50,000 to 60,000 cords of pulp wood, besides ties, poles, posts, etc., and the average value at $3,000,000. He also stated that the investment in mills and in timber by the companies which used this boom for the transportation of logs down the river either to the mills or to the place of loading them on cars is $20,000,000. Within the last four or five years the lumbering operations on the Rainy River have increased

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to a very considerable extent, especially since the paper mills began operating in the summer of 1910.

It was also established by Mr. Backus that the total acreage of the boom, 305.3 acres, is barely sufficient for the handling of the timber supplying the mills.

The undersigned crossed to Fort Frances and visited the partly constructed mill at that point. When completed, this large establishment will employ a great number of hands and turn out a large product.

Two witnesses were examined in relation to the navigation of the Rainy River.

There is no doubt that before the Canadian Northern Railway was built the Rainy River formed an important link in the chain of navigable waters, which stretches from the head of Lake Superior to the Lake of the Woods, and served as a highway for travelers and freight. In fact, the undersigned were able to gather from what they heard during their visit to this section of the country, and from evidence given before them in the matter of the levels of the Lake of the Woods, on a previous visit, that prior to the construction of the railway there was considerable traffic up and down the Rainy River, but although there was some difference of opinion upon the point at the hearing on the 6th of May, the undersigned can state that the great weight of evidence goes to show that there is very little traffic at the present time upon the river, and that the carrying of passengers by boats is almost exclusively restricted to the carriage of tourists. The witness, Fred Smith, who had been in the steamboat business himself, swore that after the building of the railway his company persevered in running their boats for two years, but that this was done at a constant loss and that the shareholders, who had had to contribute toward the expenses for these two years, finally decided to give up; the undersigned saw one of the boats high and dry on the shore, where it has been lying ever since and gradually falling to pieces.

It appears to the undersigned that the predominant interests in the Rainy River are the lumbering interests, and although they do not express the opinion that the navigation interests are to be neglected, still, the immediate future of the country around International Falls on the American

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side, and Fort Frances on the Canadian side, seems to depend to a great extent upon the progress and prosperity of the lumber and pulp mills.

It appears from the evidence of Mr. Giles, Col. Potter, and Mr. Chapleau that the first map filed by the applicants with their application did not correctly represent the boom as built in the river, that certain representations and suggestions had been made by the Dominion Government and that these suggestions had been, to a great extent, if not wholly, carried out in the amended plan filed and in the reconstruction or correcting of the boom in the river.

Upon this point Mr. Giles says:

Q. Were those changes indicated on the small map the only changes which have been recommended by the department of public works?—A. They were the changes that were asked for by the department of public works of Canada.

Q. And the only changes?—A. And the only changes they asked for. From piling No. 27, I think it was, to a certain distance up the river they asked us to remove, and they wanted the sheer boom removed at the Laurel Dock, and that has been done, and the piling in the channel that they wanted to be removed. The only thing that has not been done is the dredging of the channel and the removing of those stone piers that you saw, of the sheer boom down there, which we have marked on the map "to be removed."

As already stated, during the visit on the previous day, Capt. Black admitted that corrections and improvements in the boom had been made, and he concurred with the others present that if other slight corrections and improvements were made the objections of the navigation interests to the boom would disappear.

There were three points at which it was at first suggested that some changes might be made in the interests of navigation, viz, at a point opposite lots 1 and 2 of section 30, lot 2 of section 25, and at a point about 600 feet east of Watrous Island.

Col. Potter and Mr. Chapleau were examined as to the corrections or improvements which should be made at these points. In relation to the first point, viz, lots 1 and 2, section 30, Col. Potter says:

The river is narrow. It is a straight reach, and there is no difficulty in navigating through it. The only question, as I under-

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stand it, is the possibility of having to turn in it. You could not operate the boom and give them room to turn in there; therefore the 10, 15, or 20 feet that would be taken away from the boom company would be of no advantage to navigation and might hamper the boom company a little—that would be my opinion—at that point.

Q. Would that mean that there is no way of allowing these people to turn their boats there at all—that they would not be able to stop if it was necessary to turn at that point?—A. They would have to go below and turn around and run up if they happened to want to make a landing at that one particular point. At that particular point the boom company couldn't operate and give the steamers a chance to turn; they would have to go below, anyhow; and the little additional width that you could give them without seriously hampering the boom company would not help them enough to pay to have it done, in my opinion.

As to the next point, opposite lot 2, section 25, Col. Potter says:

I think that is a bad bend for the steamers and a bad bend for the lumber interests. But, in my opinion, the lumber interests could get along by redriving those clusters of piles—those two that are out—50 feet nearer the south shore, and it would be a help to the navigation people in making that bad bend, against an upriver wind as we had yesterday.

Coming, then, to the third point, viz, the outlet of the boom about 600 feet east of Watrous Island, Col. Potter says:

In my opinion a change could be made there without injuring the boom company at all, because they have an outlet from their boom into the river, which is a flaring outlet, for which there is no reason, and they have got the same width down here that they have at the outlet. They could take the logs out just as easily, and a very small change there would give the steamboats the whole of that 11-foot channel. By moving the last pier in about 50 feet would make a width of opening practically the same to them, and would give the navigation interests all of the 11-foot channel.

Mr. Chapleau, speaking of the first objection relating to the narrowness of the channel opposite lots 1 and 2, section 30, when asked if, in his judgment, any change could be made in the clusters of piles that would not seriously interfere with the transportation of logs through the boom, answers:

I do not think it is necessary in the interests of navigation at that particular stretch for the reason that if the clusters were moved over it would not be of any aid to boats passing through there. They have plenty of width there and plenty of water.

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Q. Yes, but if they had to turn around, then they wouldn't have plenty of room, would they?—A. It is within such a short distance that they could either go above or drop below and turn.

Q. In other words, they could not maintain a boom at all if you gave room enough for boats to turn at this particular point?—A. No; it would be too congested.

In relation to the second point, viz, lot 2, section 25, Mr. Chapleau says:

It seems to me that that is a very narrow turn there, and pretty hard to negotiate either going up or coming down the river. At the same time it is very hard to get logs around a place like that. I should imagine they would be required to keep a force of men there during the driving, and as they would be required to have men there I should say it would be much to the advantage of navigation to give them all the width they can get, although it might require to have men there at certain times of the drive.

Q. Col. Potter stated that if these two piles immediately opposite lot 2, section 25, were driven 50 feet farther in than indicated on this map, that would be practically all that the interests of navigation would require, and that it would not seriously interfere with the operation of the boom. Do you acquiesce in that opinion?—A. Yes, sir.

As to the third objection, Mr. Chapleau suggested that the three cribs and two pile clusters at the outlet of the boom be moved in toward the Minnesota shore about 80 to 100 feet. When Mr. Chapleau made this statement, Col. Potter interjected—

I had not seen the map when I testified. I would say that that outer pier might be put in 75 feet with advantage to navigation and not hurt the log driving.

When the two engineers had been heard the chairman inquired:

Have any of you gentlemen any questions that you desire to ask Col. Potter or Mr. Chapleau?

Mr. GRAHAM. No; the points I was going to speak about you have covered with these gentlemen's testimony.

Capt. Black, who was afterwards examined, traversed the same ground as had been gone over by the engineers and was examined as to the three objections, and after giving his testimony upon these points the following question was put to him:

Q. That would remove practically all of the objections, then, on the part of the navigation interests?—A. Yes; we couldn't ask for

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much more, because they have behind it very shallow water, and where there is no water there is no use for the boats to try to run.

Q. Do I understand you to say that the only objection which remains is the narrow space which is left between the Canadian shore and the boom at the first cross on the map—Exhibit A?—A. Yes; at lots 1 and 2.

Q. That is the only objection that remains now, practically?—A. Yes; and that can be overcome by the boats running either above or below before turning.

There is nothing to show that the boom itself caused any obstruction or diversion of the waters of the Rainy River on either side of the line affecting the natural level or flow of boundary waters on the other side of the line, viz, on the Canadian side, but it is in evidence that the operation of the works might, if, for instance, a jam occurred, have that result or effect. The dredging of the channel at the spot indicated would alter or lower the level of the stream.

When all the witnesses had been examined, the chairman said:

Have any of you gentlemen anything further to offer? If there is nothing further, the hearing is closed.

None of the parties present offered any evidence or remarks, and consequently the proceedings were declared to be at an end.

It will be noticed that neither Government nor any of the interests were represented by counsel, although, as herein above stated, notices had been duly given of the proceedings.

The objections urged on behalf of the Government of Canada in the statement in response to the application filed by Mr. John Thompson, as herein above mentioned, may be summarized under the following headings:

1. The plan filed with the application does not show the true location of the boom as constructed.

2. The international boundary not yet having been settled, it is impossible to say within what jurisdiction the boom will lie.

3. The soundings in the river are incomplete, and therefore it is not possible to say where the boom should be placed, having regard to the interests of navigation.

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4. The boom is in some places so constructed as to leave no room for steamers navigating on the river to turn.

5. The dredging proposed will alter the level of the water.

6. It should, however, be possible to conciliate the different interests in the river.

The undersigned, after having heard the evidence and visited the ground, can safely say that the objections raised by the Government have been met, and that, in the words of the last paragraph of the statement in response, it is "possible to allow the applicants privileges in the river so as not to unduly interfere with navigation."

CONCLUSIONS.

The undersigned have come to the following conclusions:

1. Whether the international boundary follows the center of the stream or the center of the channel, the boom is almost completely built in American territory.

2. The existence and the maintenance of this boom is necessary for the carrying on of the chief industry on both sides of the river in the district, viz, the manufacture of lumber, wood pulp, and paper.

3. The district on both sides of the Rainy River is vitally interested in the progress and prosperity of the manufacturing concerns above mentioned.

4. Although at one time there may have been a good deal of necessary navigation on the Rainy River, in consequence of the building of the railway, circumstances have completely changed, and the paramount consideration now to be taken into account is its utilization as a highway to carry logs and timber for the different mills and factories at International Falls and elsewhere.

5. Provided certain changes were made in the construction of the boom and the channel dredged, it was admitted on all sides that the navigation of the river would not be seriously interfered with.

6. The boom was built before any authorization was obtained from the Dominion Government, but upon representations being made to the applicant the construction of the boom has been changed so as to meet the requirements of the department of public works of Canada.

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RECOMMENDATIONS.

Under these circumstances the undersigned recommend:

1. That the changes suggested by Col. Potter and Mr. Chapleau be made in the construction of the boom, viz:

(*a*) Immediately opposite lot 2 of section 25, by removing four clusters of piles and driving them 50 feet nearer the south shore;

(*b*) That the three cribs and two pile clusters at the outlet of the boom be moved in toward the Minnesota or south shore 75 feet; and

(*c*) That a channel 2,800 feet long, 50 feet wide, and 8 feet deep be dredged by the company at the place and in the manner shown upon the map or plan filed as Exhibit A, this channel to be maintained at the same length, width, and depth by the company as long as the boom remains in place, or until such time as the Governments of both countries have decided otherwise.

2. That the applicant be given a reasonable time, say six months, within which to carry out these changes and works.

3. That upon the joint report of Col. Potter and Mr. Samuel J. Chapleau, or other officers appointed by the respective Governments, that the said works have been satisfactorily carried out, the commission grant the company's application and approve of the works.

The undersigned submit with the present report the evidence taken by them at International Falls and the exhibits.

TH. CHASE CASGRAIN.
JAMES A. TAWNEY.

After reading the foregoing report and after careful consideration, the commission unanimously adopted the same.

It is therefore *ordered*, That the application of the Watrous Island Boom Co. for the approval, by this commission, of the construction and maintenance of certain booms in Rainy River between the mouth of Little Fork River and the mouth of Black River in Minnesota for storing, handling, sorting, and loading logs and forest products in accordance with the

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maps and plans for the construction of said booms lastly submitted to the commission, be, and the same is hereby, approved, subject, however, to the following conditions, to wit:

(*a*) That the four clusters of piles immediately opposite lot 2 of section 25, as shown on Exhibit A,[1] copy of which is hereto attached, be removed and redriven 50 feet nearer the south or Minnesota shore of Rainy River than where said clusters of piles are now located upon said exhibit.

(*b*) That three cribs and two pile clusters at the outlet of the boom near the head of Watrous Island be moved in or back toward the south or Minnesota shore of said Rainy River 75 feet.

(*c*) That a channel 2,800 feet long, 50 feet wide, and 8 feet deep be dredged by the applicant at the place and to the extent shown upon the map or plan for said dredging as the same appears on said Exhibit A, said channel to be maintained in accordance with said plans by the applicant as long as the boom is maintained or until such time as the Dominion of Canada or the United States may decide otherwise, and that said dredging be done within at least six months from the date of this order.

(*d*) That the conditions and modifications upon which the approval of this commission is granted be performed and carried out under the direction and supervision of the Department of Public Works of Canada and the War Department of the United States.

It is therefore *ordered* accordingly.

Dated Montreal, 2d September, 1913.

JAMES A. TAWNEY,
TH. CHASE CASGRAIN,
GEORGE TURNER,
H. A. POWELL,
C. A. MAGRATH.

Mr. Streeter, having ceased to be a member of the commission at the time the order was ready for signature, his signature is not affixed to the order.

[1] Exhibit A, on a scale of 300 feet to 1 inch, has been filed with the decision.

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HEARINGS

IN THE MATTER OF THE APPLICATION OF THE WATROUS ISLAND BOOM COMPANY FOR APPROVAL OF PLANS FOR BOOM IN RAINY RIVER.

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LETTER OF TRANSMITTAL.

DEPARTMENT OF STATE,
Washington, April 5, 1912.

INTERNATIONAL JOINT COMMISSION OF THE UNITED STATES AND CANADA,
Washington, D. C.

SIRS: I have the honor to transmit for appropriate action by the International Joint Commission in joint session, an application of the Watrous Island Boom Co., set forth in a printed pamphlet, accompanied by certain maps and plans, and addressed to the International Joint Commission of the United States and Canada, the Secretary of State, and the Secretary of War of the United States, submitting plans for booms in Rainy River between the mouth of Little Fork River and the mouth of Black River for storing, handling, sorting, and loading logs and forest products, and requesting approval of such plans.

In this connection I inclose a copy of a permit issued April 3, 1912, to the Watrous Island Boom Co. and signed by Robert Shaw Oliver, the Assistant Secretary of War, and a copy of a letter addressed by Francis R. Shunk, lieutenant colonel, Corps of Engineers, United States Army, to the Chief of Engineers, United States Army, dated January 31, 1912, and the first indorsement thereon by L. H. Rand, captain, Corps of Engineers, United States Army, dated February 17, 1912, second indorsement of Francis R. Shunk, lieutenant colonel, Corps of Engineers, dated March 23, 1912, third indorsement of W. H. Bixby, Chief of Engineers, United States Army, dated April 2, 1912, fifth indorsement by E. H. Crowder, Judge Advocate General of the United States Army, dated April 3, 1912, and sixth indorsement of Robert Shaw Oliver, Assistant Secretary of War, dated April 3, 1912.

I have the honor to be, sirs,
Your obedient servant,

HUNTINGTON WILSON,
Acting Secretary of State.

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WATROUS ISLAND BOOM CO.

APPLICATION OF WATROUS ISLAND BOOM CO. FOR APPROVAL OF PLANS FOR BOOM IN RAINY RIVER.

To the honorable the International Joint Commission, Washington, D. C., and Ottawa, Canada, the Secretary of State and the Secretary of War of the United States, Washington, D. C.

GENTLEMEN: The undersigned, Watrous Island Boom Co., a corporation organized under the laws of the State of Minnesota for the purpose of improving Rainy River on the northern boundary of the State, and its tributaries, including, among others, Winter Road, Beaudette, Rapids, Black, Big Fork, Little Fork, Ash, Vermillion, and Namakan Rivers, and their tributaries, and the driving of logs therein, or in any portion thereof, and the improvement of such streams and tributaries by clearing and straightening the channels thereof, closing sloughs, directing sluice-ways, booms of all kinds, side rolling, sluicing and flooding dams, or otherwise, and keeping such works in repair and operating the same so as to render driving logs in such streams and tributaries reasonably practicable and certain and charging and collecting reasonable and uniform tolls upon all logs, lumber, and timber driven, sluiced, or floated on the said streams or any thereof; also taking possession of all logs put in such streams, and upon such rollways, and breaking the rollways and driving the logs, lumber, and timber; and also driving any and all logs and timber at the request of the owner or owners, which may be put into said streams or any thereof, and taking charge of same and driving the same down and out of such streams or down so far as the improvements of the company may extend; and charging and collecting therefor of the owner, or party controlling said logs or timber, reasonable charges and expenses for such services; also buying, selling, and using all property, real and personal, necessary or convenient for its purposes, herewith submits plans for booms in Rainy River between the mouth of Little Fork River and the mouth of Black River, for storing, handling, sorting, and loading logs and forest products, and respectfully requests approval of such plans.

Appended to this application and printed herewith are:

1. A copy of the articles of incorporation of Watrous Island Boom Co.

2. The necessary duplicates and copies of this application required by the rules of the International Joint Commission and the Department of War, as well as the plans of the boom and surveys and soundings of the adjacent waters.

Respectfully submitted.

WATROUS ISLAND BOOM COMPANY,
By EDWARD WELLINGTON BACKUS, *President.*

C. J. ROCKWOOD,
Attorney for Applicant,
607 Andrus Building, Minneapolis, Minn.

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CERTIFICATE OF INCORPORATION OF WATROUS ISLAND BOOM CO.

The undersigned do hereby associate themselves together and agree to form a corporation under the General Statutes of the State of Minnesota, and for that purpose do adopt and sign the following certificate of incorporation:

ARTICLE I.

The name of this corporation shall be Watrous Island Boom Company.

The principal place for the transaction of its business shall be the city of Minneapolis, in the county of Hennepin and State of Minnesota. The general nature of its business shall be the improvement of Rainy River on the northern boundary of the State, and its tributaries, including, among others, Winter Road, Beaudette, Rapids, Black, Big Fork, Little Fork, Ash, Vermillion and Namakan Rivers, and their tributaries, and the driving of logs therein and the holding and handling logs therein, or in any portion thereof, and the improvement of such streams and tributaries by clearing and straightening the channels thereof, closing sloughs, directing sluiceways, booms of all kinds, side rolling, sluicing and flooding dams, or otherwise, and keeping such works in repair and operating the same so as to render driving logs in such streams and tributaries reasonably practicable and certain and charging and collecting reasonable and uniform tolls upon all logs, lumber and timber driven, sluiced, or, floated on the said streams or any thereof; also taking possession of all logs put in such streams, and upon such rollways, and breaking the rollways and driving the logs, lumber and timber; and also driving any and all logs and timber at the request of the owner or owners, which may be put into said streams or any thereof, and taking charge of same and driving the same down and out of such streams or down so far as the improvements of the company may extend; and charging and collecting therefor of the owner or party controlling said logs or timber reasonable charges and expenses for such services; also buying, selling and using all property, real and personal, necessary or convenient for its purposes.

ARTICLE II.

The time of the commencement of the corporation shall be the 25th day of March, 1910, and the period of its continuance shall be thirty (30) years.

ARTICLE III.

The amount of the capital stock of the corporation shall be fifty thousand (50,000) dollars, which shall be paid in as called for by the board of directors.

ARTICLE IV.

The highest amount of indebtedness or liability to which the corporation shall at any time be subject shall be one hundred thousand (100,000) dollars.

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ARTICLE V.

The names and places of residence of the persons forming this association for incorporation are Edward W. Backus, Minneapolis, Minnesota; Wm. F. Brooks, Minneapolis, Minnesota, and Chelsea J. Rockwood, Minneapolis, Minnesota.

ARTICLE VI.

The government of the corporation and the management of its affairs shall be vested in a board of not less than three (3) nor more than nine (9) directors, who shall be elected by the stockholders at the annual stockholders' meeting, to be held on the first Tuesday after the first Monday in January of each year, beginning with the year 1911. The directors shall elect a president, a vice president, a secretary and a treasurer of the corporation immediately after the annual meeting. All officers and directors shall hold office until their successors are elected and have accepted. The stockholders may remove any director at pleasure, and fill any vacancy, and the directors may remove any officer at pleasure and fill the vacancy. The stockholders may make by-laws for the government of the corporation, and the directors may make by-laws not inconsistent with those made by the stockholders.

The names of the first directors and officers are: President, Edward W. Backus; vice president and treasurer, Wm. F. Brooks; secretary, Chelsea J. Rockwood.

ARTICLE VII.

The capital stock of the corporation shall be divided into five hundred (500) shares of one hundred (100) dollars each.

In witness whereof, we have hereunto set our hands and seals this 19th day of March, 1910.

E. W. BACKUS, [SEAL.]
WM. F. BROOKS, [SEAL.]
CHELSEA J. ROCKWOOD. [SEAL.]

Signed and sealed in presence of—
E. M. CHANDLER,
A. O. COLBURN.

STATE OF MINNESOTA, *County of Hennepin, ss.*

On this 21st day of March, 1910, before me a notary public within and for said county personally appeared Edward W. Backus, Wm. F. Brooks and Chelsea J. Rockwood, to me known to be the persons described in and who executed the foregoing certificate of incorporation and acknowledged that they executed the same as their free act and deed.

[NOTARIAL SEAL.] ALGERNON COLBURN,
Notary Public, Hennepin County, Minn.

(My commission expires Oct. 5, 1912.)

Filed for record in this office on the 21st day of March, A. D. 1910, at 11½ o'clock a. m.

JULIUS A. SCHMAHL,
Secretary of State.

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UNITED STATES OF AMERICA,
STATE OF MINNESOTA,
DEPARTMENT OF STATE.

I, Julius A. Schmahl, secretary of state of the State of Minnesota, do hereby certify that I have compared the annexed copy with record of the original instrument in my office of articles of incorporation of the Watrous Island Boom Co., as recorded in book S–3 on incorporations on page 616 and that said copy is a true and correct transcript of said instrument and of the whole thereof.

In testimony whereof I have hereunto set my hand and affixed the great seal of the State, at the capitol, in St. Paul, this 24th day of February, A. D. 1912.

[SEAL.]

JULIUS A. SCHMAHL,
Secretary of State.

COPY OF PERMIT FROM THE SECRETARY OF WAR TO CONSTRUCT BOOMS AND TO DREDGE IN THE RAINY RIVER.

Whereas, by section 10 of the act of Congress, approved March 3, 1899, entitled "An act making appropriations for the construction, repair, and preservation of certain public works on rivers and harbors, and for other purposes," it is provided that it shall not be lawful to build or commence the building of any wharf, pier, dolphin, boom, weir, breakwater, bulkhead, jetty, or other structures in any port, roadstead, haven, harbor, canal, navigable river, or other water of the United States, outside established harbor lines, or where no harbor lines have been established, except on plans recommended by the Chief of Engineers and authorized by the Secretary of War; and it shall not be lawful to excavate or fill, or in any manner to alter or modify the course, location, condition, or capacity of, any port, roadstead, haven, harbor, canal, lake, harbor of refuge, or inclosure within the limits of any breakwater, or of the channel of any navigable water of the United States, unless the work has been recommended by the Chief of Engineers and authorized by the Secretary of War prior to beginning the same; and

Whereas the Watrous Island Boom Co., a corporation organized under the laws of the State of Minnesota, has applied to the Secretary of War for the approval of plans, hereto attached, for booms in Rainy River, between the mouth of Little Fork River and the mouth of Black River, in the State of Minnesota, for storing, handling, sorting, and loading logs and forest products, which plans have been recommended by the Chief of Engineers;

Now, therefore, this is to certify that the Secretary of War hereby gives permission to the said Watrous Island Boom Co. to construct booms and to dredge in the said Rainy River, as shown upon said plans, so far as the said booms and dredging affect navigable waters of the United States, subject to approval by the International Joint Commission and to such conditions not concerning the interests of navigation which the said commission may prescribe, and subject to further conditions as follows:

1. That the work herein permitted to be done shall be subject to the supervision and approval of the engineer officer of the United States Army in charge of the locality.

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2. That if at any time in the future it shall be made to appear to the Secretary of War that the structures herein authorized are unreasonable obstructions to the free navigation of said waters, said licensee will be required, upon due notice from the Secretary of War, to remove or alter the same so as to render navigation through said waters reasonably free, easy, and unobstructed.

3. That the work is to be executed as shown upon the plan hereto attached.

4. That where the navigable channel is inclosed in the boom a channel 200 feet wide and 8 feet deep at mean low water shall be dredged outside of the boom for the accommodation of boats.

5. That all work, except dredging, shall be completed before the opening of the navigation season of 1912.

6. That all dredging shall be completed before the end of the navigation season of 1912.

It is understood that this instrument simply gives permission under said act of Congress to do the work herein authorized; that it does not give any property rights; and does not authorize any injury to private property or invasion of private rights.

Witness my hand this 3d day of April, 1912.

ROBERT SHAW OLIVER,
Assistant Secretary of War.

UNITED STATES ENGINEER OFFICE,
St. Paul, Minn., January 31, 1912.

The CHIEF OF ENGINEERS UNITED STATES ARMY,
Washington, D. C.

SIR: I have the honor to submit the following report in compliance with second indorsement on the application of the Watrous Island Boom Co. for permission to construct boom on Rainy River (E. D. 83573).

2. An informal hearing in this matter was held in the United States Engineer Office, St. Paul, on January 29. Representatives were present of the Watrous Island Boom Co., Backus-Brooks Lumber Co., Shevlin-Mathieu Lumber Co., and the Rat Portage Lumber Co. After much discussion it appeared that the facts in the case were as follows:

(*a*) A boom is necessary in this portion of Rainy River for the proper carrying on of the logging business.

(*b*) The site selected is by no means an ideal one, but is the best available. The suggestion has been made that the boom be transferred bodily downstream to the north-and-south reach below Black River. In this portion of the river the boat channel hugs the American shore for a mile and a half or two miles, so that a boom on the American shore would be very objectionable from the standpoint of navigation.

(*c*) The objections to the present proposed boom are as follows:

(1) It obstructs unduly the mouth of the Big Fork River.

(2) It incloses a certain portion of the deep-water channel to the disadvantage of boats using the river.

(3) Its storage capacity and sorting capacity taken together are not sufficient for the proper handling of business. This has resulted in

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great delay and has necessitated obstructive works in the small tributaries to hold back logs which could not be accommodated in the boom.

3. These objections, I think, may be met in the following way:

(*a*) The extension of the boom across the mouth of Black River ought not to be permitted.

(*b*) Where the navigable channel is inclosed in the boom dredging on the outside should be required for the accommodation of boats.

(*c*) It is doubtful to what extent the other objections, which pertain to management, come within the sphere of Federal authority. However, the various companies represented at the hearing arrived at a complete understanding in the matter, and the Watrous Island Boom Co. has agreed to make the following modifications:

(1) To build a second sorting works one-half mile above the present sorting works.

(2) To build a boom between Little and Big Fork Rivers on Rainy River of sufficient size to hold all logs and timber coming out of Little Fork River, with sorting works of sufficient capacity to take care of all down-river mills.

(3) To have all work completed by April 1, 1912, excepting trail, which must be completed as soon as possible.

(4) All work to be completed according to blue print marked "Exhibit A."

(5) To double the capacity of the present sorting works.

(6) To arrange all booms so as to keep all Rainy Lake logs outside.

4. It appears, after thorough investigation, that these changes will completely meet the objections of all logging and navigation companies. With the modifications above outlined, I think that the boom will be the best possible and not unduly obstructive to navigation. I therefore recommend that the application of the Watrous Island Boom Co. be granted, subject to the following conditions:

(1) That the boom for which permit has been applied for shall begin at such point below the mouth of Big Fork River as will permit unimpeded access to that stream.

(2) That the channel be dredged to a depth of eight feet and of suitable width at the point marked "X" on the accompanying blue prints. (83573–6, 8 and 10).

(3) That a second sorting works be built one-half mile above the present one.

(4) That a boom be built between Little and Big Fork Rivers on Rainy River of sufficient size to hold all logs and timber coming out of Little Fork River, with sorting works of sufficient capacity to take care of all down river mills.

(5) That all work be completed as soon as possible.

(6) That all work be completed according to blue print marked "Exhibit A."

(7) That the capacity of the present sorting works be doubled.

(8) That the booms be so arranged that all Rainy Lake logs will be kept outside.

(9) That the boom be built under the supervision of the engineer officer in charge of the district.

(10) That the grantee shall, at its own expense, make such changes or alterations in its work as may be required at any time by the Secre-

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tary of War to maintain the free and uninterrupted navigation of the river for all purposes.

(11) That the work shall be subject to the approval of the district officer who may suspend the permit whenever in his opinion such action is necessary to insure compliance with the conditions to be imposed.

(12) That the boom shall be promptly removed whenever required by the department in the interest of navigation.

(13) That the permit, if granted, shall be inoperative if not availed of by January 31, 1913.

5. The work proposed between Little Fork and Big Fork Rivers is not covered by the present application. I have therefore advised the Watrous Island Boom Co. to make separate application in due form for this work. They have promised to do so in a few days.

6. Full notes of the hearing were taken, but it is not deemed necessary to forward them to the Chief of Engineers. However, if desirable they are available.

Very respectfully,

FRANCIS R. SHUNK,
Lieut. Col., Corps of Engineers.

[First indorsement.]

WAR DEPARTMENT,
OFFICE OF THE CHIEF OF ENGINEERS,
Washington, February 17, 1912.

1. Respectfully referred to Lieut. John N. Hodges, Corps of Engineers.

2. The recommendations within are concurred in by this office. Lieut. Hodges is requested to prepare and forward to this office, a draft of a permit, following Form No. 4, W. D., J. A. G. O., copy herewith, with such additional conditions as he may deem necessary, accompanied by a small map, on tracing linen, showing exactly what is to be covered by the permit; also a formal, concise, and definite application from the Watrous Island Boom Co., all in proper shape to be submitted for the approval of the International Joint Commission.

By command of the Chief of Engineers:

G. H. RAND,
Captain, Corps of Engineers.

[Second indorsement.]

UNITED STATES ENGINEER OFFICE,
St. Paul, Minn., March 23, 1912.

1. Respectfully returned to the Chief of Engineers.

2. The Watrous Island Boom Co. has submitted a tracing showing exactly the work which they propose to do. It appears that the works proposed at the mouth of the Big Fork River are necessary to prevent logs from that river getting into the steamboat channel, and since an opening is provided for boats, will not unduly obstruct navigation on Big Fork River. It may be added that this stream is very little used for navigable purposes.

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3. The draft of permit, with concise application and map, duplicated in sufficient numbers for submittal to the Secretary of War and to the International Joint Commission, are submitted herewith.

FRANCIS R. SHUNK,
Lieut. Col., Corps of Engineers.

[Third indorsement.]

WAR DEPARTMENT,
OFFICE OF THE CHIEF OF ENGINEERS,
Washington, April 2, 1912.

1. Respectfully submitted to the Secretary of War.

2. Application is made in the accompanying communication (E. D. 83573–47) by the Watrous Island Boom Co. for permission to construct and maintain log booms in the Rainy River, between the mouth of the Little Fork River and the mouth of Black River, Minn.

3. The Rainy River is an international boundary stream and the proposed booms and channel dredging necessary in connection therewith, are uses of boundary waters which require the approval of the International Joint Commission constituted under the provisions of the treaty between the United States and Great Britain proclaimed May 13, 1910, concerning boundary waters between the United States and Canada.

(4) The application has been considered by the district officer and attention is invited to his reports within and in the preceding indorsement. It is recommended that the proposed booms and dredging be authorized by the Secretary of War so far as they affect navigable waters of the United States, subject to conditions as set forth in the draft, herewith, of an instrument prepared for his signature.

5. It is further recommended that the authorization be transmitted to the Secretary of State for the consideration of the International Joint Commission together with the duplicate originals and fifty copies of the application, and two tracing copies of the map, as required by paragraph 8 of the rules of procedure of the International Joint Commission.

W. H. BIXBY,
Chief of Engineers, U. S. Army.

[Fifth indorsement.]

WAR DEPARTMENT,
OFFICE OF THE JUDGE ADVOCATE GENERAL,
Washington, D. C., April 3, 1912.

Respectfully returned to the Secretary of War, with draft of instrument, in duplicate, authorizing the Watrous Island Boom Co., of Minneapolis, Minn., to construct booms in Rainy River, an international boundary stream.

Attention is invited to the recommendation of the Chief of Engineers in paragraph 5 of third indorsement hereon, in which I concur, that the instrument, when executed, together with the duplicate originals and 50 copies of the application of said company, and 2 copies of the location map, be transmitted to the Secretary of State for the consideration of the International Joint Commission consti-

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tuted under the provisions of the treaty between the United States and Great Britain, proclaimed May 13, 1910, concerning boundary waters between the United States and Canada.

E. H. CROWDER,
Judge Advocate General.

[Sixth indorsement.]

WAR DEPARTMENT, *April 3, 1912.*

Respectfully referred to the honorable the Secretary of State, for transmission to the International Joint Commission for its consideration.

The return of the accompanying papers to the files of the War Department is requested, when no longer needed by the commission.

ROBERT SHAW OLIVER,
Assistant Secretary of War.

NOTICE TO CANADIAN GOVERNMENT.

INTERNATIONAL JOINT COMMISSION,
Ottawa, Canada, April 10, 1912.

To His Royal Highness the GOVERNOR GENERAL OF CANADA, etc.

YOUR ROYAL HIGHNESS: I have the honor to inform Your Royal Highness that the Watrous Island Boom Co., a corporation organized under the laws of the State of Minnesota, has applied by petition through the Government of the United States, to the International Joint Commission, for the approval of the erection of booms in the Rainy River between the mouth of Little Fork River and the mouth of Black River, for storing, handling, sorting, and loading logs and forest products. I have also to inform Your Royal Highness that the plans for the booms in question have been approved by the Secretary of War of the United States. Notice of the application has been duly published and all persons interested therein notified that they are entitled to be heard before the commission. A copy of the petition is inclosed. I have the honor to be,

Your Royal Highness's obedient servant,

LAWRENCE J. BURPEE,
Secretary.

OFFICE OF THE GOVERNOR GENERAL'S SECRETARY,
Ottawa, Canada, April 18, 1912.

SIR: I have the honor to acknowledge receipt of your two letters of the 10th instant regarding the erection of booms in the Rainy River and the erection of a dam at Kettle Falls. I have the honor to be, sir,

Your obedient servant,

H. C. LOWTHER,
Lieutenant Colonel, Governor General's Secretary.

L. J. BURPEE, Esq.,
Secretary International Joint Commission, Ottawa.

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STATEMENT IN RESPONSE TO APPLICATION.

FORT WILLIAM, ONTARIO, *April 29, 1912.*

R. C. DESROCHERS, Esq.,
Secretary Department of Public Works, Ottawa, Ontario.

DEAR SIR: Re navigation on Rainy River and the application before the International Joint Commission for approval of plans of permanent construction in the Rainy River proposed by the Watrous Island Boom Co.

We desire to call attention to improvements authorized by the Parliament of Canada May 19, 1911, incorporating the Western Canal Co., a copy of which bill is inclosed herewith.

For many years the Government at Ottawa, recognizing the importance and necessity of improving navigation on the Rainy River, have passed appropriations for the erection of a dam and locks at Long Sault Rapids, and plans were prepared by the department of public works for these improvements, but every effort to reach an agreement with the United States proved unavailing owing to that Government being unwilling to grant a foreign government any rights in United States territory. However, in 1911 the Dominion Government, acting on a suggestion of the Secretary of War of the United States, took the stand that a private holding company might be able to secure such legislation from the United States and State of Minnesota as would enable them to carry on and construct the said lock and dam. Hence the incorporation of the Western Canal Co., which company, as soon as the formal approval of the Government of the United States and State of Minnesota can be secured, are anxious to proceed with the said improvements, which, according to plans prepared and specifications being drawn up, will be of a very permanent nature.

The proposed dam and locks follow very closely the general plans and specifications formerly prepared by the Department of Public Works of Canada, a copy of which we inclose herewith, which, you will note, back the waters of Rainy River from the Long Sault Rapids (where dam is to be constructed) to a point 22 miles up the river. You will see by the inclosed copy of act passed by the Dominion Parliament that the Western Canal Co. have the right to back the waters of Rainy River to a point 5 miles west of Fort Frances. This, in the interests of the conservation of water power, should be taken into consideration, and the Watrous Island Boom Co. should make their plans conform to the best interests of navigation and development of power on Rainy River.

In view of the construction of this dam and lock being of a permanent nature and in the best interests of the commerce of both Canada and the United States, we would ask that any plans showing contemplated permanent works made by the Watrous Island Boom Co., such as piers, piling for booms, sorting gaps, etc., be not approved unless allowance is made in the construction of such works for the new levels as shown on inclosed copy of plan showing profile of the surface of Rainy River.

All of which is respectfully submitted.

Yours, truly,

THE WESTERN CANAL COMPANY,
By J. T. HORNE, *Managing Director.*

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STATEMENT IN REPLY.

Hon. PHILANDER C. KNOX,
Secretary of State, Washington, D. C.

DEAR SIR: The Watrous Island Boom Co. makes the following statement in the nature of a reply to the objections made by the Western Canal Co. to the approval of this company's plans for booms in Rainy River, in a communication dated April 29, 1912, addressed to R. C. Desrochers, Esq., secretary department of public works, Ottawa, Ontario:

1. This company is advised of the passage of the act by the Parliament of Canada, referred to in the communication of the Western Canal Co., but this company is informed and believes and therefore alleges that the Western Canal Co. has taken no steps to comply with or to carry out the provisions of said act, and in particular has taken no steps toward the construction of any dam in Rainy River at the Long Sault Rapids or elsewhere.

2. This company alleges that it is the owner in fee of a large portion of the lands on the Minnesota side of Rainy River from the mouth of Little Fork River to the mouth of Black River and has leases and contracts for constructing and maintaining its works along a large portion of the lands not already owned by this company, and has the power to acquire the right to use riparian lands and will acquire such right under the power of eminent domain between the points aforesaid where the company may be unable to purchase or lease the riparian rights.

3. This company states that the Western Canal Co. has not acquired and does not own the right to change or modify the natural levels of the waters of Rainy River between the mouths of the Little Fork and Black Rivers, and has no power to acquire such right under the power of eminent domain in the State of Minnesota, and this company claims the right to use its properties with reference to the natural conditions until the Western Canal Co. shall acquire and make compensation for the right to change such conditions.

We respectfully ask that this communication or a copy be filed with the International Joint Commission as a reply to the protest of the Western Canal Co. We have the honor to be,

Your obedient servant,

WATROUS ISLAND BOOM COMPANY,
C. J. ROCKWOOD,
Attorney for Watrous Island Boom Company,
607 Andrus Building, Minneapolis, Minn.

STATEMENT IN RESPONSE TO APPLICATION.

FORT WILLIAM, ONTARIO, *May 3, 1912.*

R. C. DESROCHERS, Esq.,
Secretary Department of Public Works, Ottawa, Ontario.

DEAR SIR: Re Watrous Island Boom Co.'s application to the International Joint Commission for approval of plans of proposed extension of boom in the Rainy River.

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The Rainy River Navigation Co. is heavily interested in navigation of the Lake of the Woods and on Rainy River, operating a line of steamers from Kenora to Rainy River and along the Rainy River to Fort Frances. We attach a small map showing route. If the Watrous Island Boom Co. are allowed to carry out their proposed extension, as can be plainly seen by reference to the inclosed blue print, it will make the river unnavigable, and therefore put our line of steamers out of business entirely on the Rainy River.

For the following reasons we believe, in the interests of the commerce and of the people of both Canada and the United States, that the Watrous Island Boom Co. should not be allowed to proceed with proposed extension of this boom, and should be compelled to remove obstructions to navigation in the shape of piers and piles already placed and driven, or to be placed and driven:

1. The channel of the Rainy River used by steamboats is necessarily in the deep water of the river, and of necessity in following the deep water winds from side to side, as is clearly shown by soundings on inclosed blue print and steamboat channel marked thus ———

2. Although the channel is a winding one, following as it does the deepest water it is an unchanging and a permanent one.

3. It will be seen from the location of the channel, as shown on blue print inclosed, that the proposed extension of boom crosses and recrosses said channel, and that piers and piles already placed and driven obstruct the said channel, and even without the boom being in place makes navigation extremely hazardous. Immediately boom is placed navigation will be utterly impossible.

4. The proposed boom makes navigation of Black River, Little and Big Fork Rivers impossible, inasmuch as this boom when constructed in the Rainy River crosses the mouth of all three of these and thereby prevents ingress or egress to the limitation of commerce of the district, and furthermore, when constructed, the boom as proposed will prevent intercourse and absolutely prohibit all commercial activities along the 12 miles of river front on the American side that the boom extends, thus prohibiting settlers and others along the river from using this international waterway for transportation.

Finally, we protest emphatically against the Watrous Island Boom Co. being permitted to place piers, piles, booms, etc., in or across the navigable channel of the Rainy River, and further request that the said Watrous Island Boom Co. be forced to remove all obstructions already placed in said channel to the detriment of navigation.

We have, at each step taken by the Watrous Island Boom Co., vigorously protested, and inclose herewith copies of protests filed.

All of which is respectfully submitted.

Yours, truly,

THE RAINY RIVER NAVIGATION COMPANY (LTD.),
GEORGE A. GRAHAM, *President.*

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STATEMENT IN REPLY.

Hon. PHILANDER C. KNOX,
Secretary of State, Washington, D. C.

DEAR SIR: The Watrous Island Boom Co. makes the following statement in the nature of a reply to the objections made by the Rainy River Navigation Co. (Ltd.), to the approval of this company's plans for booms in Rainy River in a communication dated May 3, 1912, addressed to R. C. Desrochers, Esq., secretary of the department of public works, Ottawa, Ontario:

1. This company is informed and believes, and upon information and belief states, that Rainy River Navigation Co. is not operating and does not intend to operate any line of steamers or any steamers or other craft on Rainy River along those portions of the river where this company's works are proposed to be located, nor within many miles thereof.

2. It is not proposed by this company to locate its works or any part thereof in the deep channel of Rainy River, but, on the contrary, to locate the same entirely on the southerly or Minnesota side of the center of the deep channel and at such a distance from the center of the deep channel as will not interfere in any manner with steamboat navigation.

3. It is not proposed to locate any part of the boom or works across the mouth of Black River, and such proposed works will not interfere in the remotest way with the navigation of Black River. It is proposed by the plan for which approval is asked to construct steamboat gaps in the booms at the mouths of Little Fork and Big Fork Rivers in such a way as not to interfere with steamboat navigation of such streams, or passage from or to Rainy River.

This company further states that the clusters of piles, referred to in said communication as located on the Ontario side of the deep channel, were located by mistake by employees of this company and contrary to instructions of the managing officers of the company, and the company is now engaged in removing such of said clusters of piles as the department of public works of Canada requires to be removed, leaving only such clusters of piles and booms as the department of public works approves.

We respectfully ask that this communication, or a copy, be filed with the International Joint Commission as a reply to the protest of the Rainy River Navigation Co. (Ltd.). We have the honor to be,

Your obedient servant,

WATROUS ISLAND BOOM COMPANY,
By WM. F. BROOKS, *Secretary.*
C. J. ROCKWOOD,
Attorney for Watrous Island Boom Company,
607 Andrus Building, Minneapolis, Minn.

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HEARING BEFORE COMMISSION.

A special meeting of the International Joint Commission was held at Washington, D. C., Monday, November 18, 1912, for consideration of the application of the Watrous Island Boom Co.

There were present James A. Tawney (presiding), Th. Chase Casgrain, George Turner, C. A. Magrath, Frank S. Streeter, and H. A. Powell. L. White Busbey and Lawrence J. Burpee, secretaries.

Mr. John Thompson, K. C., of Ottawa, appeared for the Dominion of Canada.

Mr. TAWNEY. Mr. Thompson, the application of the Watrous Island Boom Co. for the approval by this commission of its plans for the construction and maintenance of a dam on the Rainy River below International Falls was filed with the commission on April 6, 1912. That application was served on the Dominion Government, and also notice of the application was served by publication on the other parties interested at that time. Up to the present there has been no reply submitted to the commission and no answer from the Dominion Government, under rule 10 of the rules of the commission, which allows the parties 60 days after the filing of the commission, in which to present a reply to the application. We have understood, informally this morning, that the Dominion Government is prepared and desirous of filing with the commission an answer to the application for the approval by this commission of the plans of the Watrous Island Boom Co. Is it your desire to present an answer now, notwithstanding the expiration of time under the rules?

Mr. THOMPSON. The rule required a reply within 60 days, and I presume it would be in the power of the commissioners to extend that time.

Mr. TAWNEY. It is within the power of the commission to accept the answer, if it is the desire of your Government to file the answer, and to extend the time under that rule.

Mr. THOMPSON. It is the desire of the Canadian Government to file an answer, not that the Government objects in toto to this boom being constructed, but they submit that until further information is forthcoming that the application be not dealt with by the commissioners.

Mr. TAWNEY. The first thing the commissioners desire to know is whether it is the purpose of your Government to file an answer to the application for the approval of the plans as submitted by the applicants.

Mr. THOMPSON. That is the desire of the Government.

Mr. STREETER. And you make an application on behalf of the Canadian Government that you be allowed to file this answer, notwithstanding the fact that it is several months later?

Mr. THOMPSON. That is the application, sir.

Mr. TAWNEY. What have you to offer as an excuse for not submitting the answer required in this case under the rules?

Mr. THOMPSON. The Government engineers have been making an investigation of the locality in question, and up to quite recently, and they are not in the possession of such information as would enable them to say whether or not it was desirable that the application should be postponed. They, at the present time, have such

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information as enables them to say that they think the matter should not be dealt with at the present time.

Mr. TAWNEY. I may say for your information that the practice before the commissioners in cases of that kind is somewhat smiliar to the practice in courts of justice on both sides of the line; it is, that if the Government or any other party is not prepared to answer within the rules, that an application should be presented to the commission for an extension of the time. If this matter had been disposed of at Ottawa the commission would have had no means of knowing that the Government intended at all to make answer to the application.

Mr. THOMPSON. I suppose it is my duty now to make formal application for an extension of the time.

Mr. TAWNEY. I think that would be the practice before the commission.

Mr. THOMPSON. I had no precedent to guide me in this matter. I thought that instead of letting it go in that way I would give the commission some information as to why the matter should be postponed.

Mr. STREETER. Rule 23 says:

Amendments of applications and statements may be allowed by the commission where substantial justice requires it, and the time for the filing of any paper or the doing of any act by these rules required may be extended in the like case.

Mr. THOMPSON. I had that rule in mind.

Mr. TURNER. I suggest that Mr. Thompson's statement that these facts have been developed by subsequent examination of the engineers of the Dominion Government is sufficient ground on which we might allow the filing of this answer now.

Mr. TAWNEY. I would suggest also for the information of Mr. Thompson or anybody else, that under the rule, if the party is not prepared to answer within the time fixed by rule 20, an application for extension of time should be made, so that the commission will know that the party is contemplating an answer.

Mr. TURNER. I think that is a very just observation.

Mr. THOMPSON. I wish to make it clear that we are not opposing the construction of this boom in any respect, but what we desire to arrive at is location of the boom which will be in the best interests both of navigation and of the applicant.

Mr. TAWNEY. An order was made allowing the Dominion of Canada to file a statement, and the statement will be received, and a copy of the statement will be served on the Government of the United States and on the applicants.

Mr. CASGRAIN. I think, Mr. Thompson, that our rules provide also that the statement in reply should be printed and a certain number of copied furnished. You also have to file your plans; I understand you have a plan here.

Mr. THOMPSON. I have. It is not completed yet but I would like to say that the officials of the department have not yet examined the river beyond the point which my plan shows. If the commission extends the time for filing the objection and I am required to file specific objections, I may say that I am not at present in the position to state just how long it will take the engineers to make a very thorough examination and report to the Government, upon which to enable them to formulate their objection to the location.

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Mr. TAWNEY. You could in your answer state your objections generally, and then the rest would be a matter of evidence on the hearing.

Mr. THOMPSON. I am now in a position to state my general objection.

Mr. TAWNEY. On the hearing upon that application and your answer, your engineers can state these specific objections and also state where in their opinion the boom ought to be located, so as to serve the interests of navigation without too serious injury to the boom interest. That is a matter of evidence; there is no use delaying the time for filing a supplementary statement of that kind. They have 30 days in which to reply to your statement, and then the issue is joined and the time and place will be fixed for the hearing, and the Dominion of Canada and the Ontario Government or private interests can be heard.

Mr. THOMPSON. I am in a position to file at once my answer, showing the general nature of the objection.

Mr. CASGRAIN. By our rules, if anything else is disclosed, you may apply for an amendment. Although we like to adhere to the rules laid down, I think the commission under circumstances which would warrant it, would give you leave to amend your pleadings if substantial justice required it.

Mr. TAWNEY. Certainly, if an amendment is necessary to present evidence that could not be presented under the original application.

Mr. THOMPSON. I only raised the question, because I did not wish to be met with the argument, on the part of the applicant, that we did not give sufficient details to our objections to enable them to form their reply or produce evidence in answer to ours.

Mr. STREETER. How soon can you serve this answer on the applicants and on the Government?

Mr. THOMPSON. Inside of a week, sir. It is a question of having the material printed.

Mr. STREETER. Representing the Canadian Government, have you considered the question of jurisdiction, as to what our jurisdiction is under the treaty?

Mr. THOMPSON. I did consider that point and it appeared to me there is full jurisdiction in this commission to either approve or disapprove of the location of the dam.

Mr. STREETER. If we accept this delayed answer now, are we required to give the applicant 30 days unless the applicant should need it.

Mr. CASGRAIN. What Mr. Thompson has to do now is to file a certain number of copies with the secretary, and then the secretary has to notify the Government, by sending them a copy and also, I suppose, to private parties.

Mr. STREETER. That is right, but I was wondering whether Mr. Rockwood would want the 30 days' notice.

Mr. CASGRAIN. Possibly not.

Mr. STREETER. And perhaps by arrangement an agreement could be made that these parties would come before us at a meeting in December or shortly after the filing of the answer, if that were found convenient.

Mr. THOMPSON. I can undertake to have the answer filed within 10 days.

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Mr. STREETER. You are three or four months behind now. Can you not have it filed before 10 days?

Mr. THOMPSON. If I were in Ottawa I could have it filed within a couple of days.

Mr STREETER. You can get it filed here within two days.

Mr. TAWNEY. Do you mean to have a statement printed and filed here?

Mr. STREETER. Certainly.

Mr. TAWNEY. He could not get the plans filed.

Mr. STREETER. He can file what he has got with the suggestion that he wants to file something further.

Mr. THOMPSON. I presume I could have the answer printed here. When I said 10 days I was thinking of having it done in Ottawa.

Mr. TURNER. Does your investigation show that this is entirely on the American side?

Mr. THOMPSON. No; it goes to both sides. The plan supplied by the applicant is on a very small scale, but the plan we have here shows that it not only crosses the river but recrosses the river, in such a way as to make navigation impossible without dredging. In fact, their plans show that a considerable amount of dredging has to be carried out in order to make the river navigable after the booms are constructed. Until it is ascertained just how navigation will be affected by the booms as they propose to place them we are not in a position to say just what our objection is. The soundings are very meager now, as the plan shows, and there is no means of ascertaining at present, until further soundings have been taken, as to whether the river is such that navigation can be carried on on the Canadian side. The present boat channel is as shown on the blue print. That blue print shows that the steamers come up on the Canadian side to some distance below Big Fork River. At present they cross to the American side, continue up on the American side for some distance, and then recross to the Canadian side. The investigations made so far show that navigation could be carried on by the steamers if the boom was slightly moved toward either the Canadian side or the American side, without the necessity of crossing and recrossing the boom, in their progress up the river. I understand, although I have not the evidence to submit to the commission at present, that while the river generally speaking is sufficiently deep to permit navigation freely on the Canadian side, the bowlders and ledges of rock make it exceedingly dangerous. The Government may come to the conclusion that it would be advisable to clear the stream of these obstructions so that navigation would be unimpeded. These are the points that the engineers are now endeavoring to get some information on.

Mr. CASGRAIN. This plan is for about 5 miles of the river only?

Mr. THOMPSON. Yes; approximately one-half the distance.

Mr. CASGRAIN. Are there any other plans in the department at Ottawa which would show what is being done on the other half by the Watrous Island Boom Co.?

Mr. THOMPSON. The plans are almost completed, showing the location of the piles. These piles are driven into the mud; it is not a rock bottom. In many rivers the booms are held in place by stone piers, but here the booms are held by clusters of piles and the plan which is almost prepared shows the location of these piles. But we

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have not yet the information to show the depth of the water on the side of the boom.

Mr. CASGRAIN. When will that be ready?

Mr. THOMPSON. I have not definite information on that. Mr. Stewart, the engineer in charge of this work for the Government, is present, and he will probably be able to give information on that point.

Mr. CASGRAIN. Will you consult with Mr. Stewart? You understand, of course, that the Government is far behind in this matter. These applicants have been here since the month of April last, and we feel it would be unjust to them if we did not hurry you up now.

Mr. THOMPSON. There is no delay on the part of the department in obtaining the information, but it has taken considerable time to ascertain the state of the river for an extent of 10 miles.

Mr. TAWNEY. The delinquency, if I may call it such, is in not notifying the commission that you were preparing data upon which to base a statement in reply to the application.

Mr. W. J. STEWART, engineer, of Ottawa, chief Dominion hydrographer, was then called before the commission.

Mr. CASGRAIN. What have you to say as to the position with regard to the preparation of the plans in this matter?

Mr. STEWART. The public works department propose to go on with the survey in the coming summer. They have to get a vote from Parliament before they can make any survey. We have not the information in Ottawa at the present time, and there is no chance to get it now. It will take quite a time to get the exact soundings in that river, and make a survey and determine whether the channel is blocked by the existing piles.

Mr. MAGRATH. Are these piles already in place?

Mr. STEWART. These piles that are marked on that plan are in place. Of course, on the plans submitted by the Watrous Island Boom Co., a great many of the piles have not been placed. I made the remark that the two plans do not agree. The plans for the boom company show a line of piles practically up and down the middle of the river. This plan submitted by the officers of the public works department does not show any such condition of affairs. The other plan is the proposed construction. So far as they have actually completed it, the two plans do not agree.

Mr. TAWNEY. Are you aware, Mr. Stewart, of any action having been taken by the Ontario Government for the purpose of having certain boom piles removed and changed in the Rainy River?

Mr. STEWART. I did not know that the Ontario Government were doing anything in the matter, but I understood that our public works department had ordered some of the piles to be moved.

Mr. TAWNEY. I did not know which Government it was, but it developed in the hearing at International Falls that some of the piling had been removed, and I understood it was the Ontario Government, although as to that I may have been mistaken.

Mr. STEWART. There was some objection by the department of public works at Ottawa, but I understood they were not in a position to say whether they could remove them or not. The boundary line has not been determined there, and of course the Canadian Government has no jurisdiction on the Ontario side.

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Mr. CASGRAIN. Mr. Thompson, are the objections you have filed to the plans submitted by the Watrous Island Boom Co. with its application or are they to the actual state of existing affairs in the river, because what we are concerned with now is the actual application before us. Is your answer or defense filed in respect to the application which is before us?

Mr. THOMPSON. We object to the way in which the booms have been laid out.

Mr. CASGRAIN. Laid out on the plan?

Mr. THOMPSON. The plan is not correct; the way in which the booms have been laid out in fact in the river.

Mr. CASGRAIN. I do not think we are concerned with that. They have to have the authority of this commission to establish their booms, and they submit a certain plan to us which they call upon us to approve. If they have done anything outside of that, they have done it without approval.

Mr. TAWNEY. In violation of the license they have obtained from our Government.

Mr. CASGRAIN. It seems to me that your objection must be to the application and the plans which the Watrous Island Boom Co. have proposed to us.

Mr. THOMPSON. We object to these plans as filed, because we say these plans do not show the true location.

Mr. CASGRAIN. And you will have this reply printed as soon as possible?

Mr. THOMPSON. Yes, sir; I will have it done at once.

Mr. MAGRATH. I would like to know if the boom is actually on the ground now.

Mr. TURNER. If it is, it is unauthorized.

Mr. MAGRATH. Is the application for approval of an old boom, or is it an application for a new boom?

Mr. THOMPSON. There is an old boom and that boom has to be extended about 6 miles, in round figures; there are some slight alterations made in the old boom.

Mr. MAGRATH. I think the applicants should be asked to have their plan enlarged. The plan shown by Mr. Thompson in this case shows that it stands where the thing is. I do not think it would be unreasonable to ask the applicants to have the scale of that plan enlarged to the size of the plan filed by the Canadian Government, and then we can see at a glance what the situation is.

On the motion of Mr. Tawney, seconded by Mr. Turner, the following was adopted by the commission:

Upon hearing an application on behalf of the Dominion of Canada for leave to file an answer to the application of the Watrous Island Boom Co. for approval of plans for boom in Rainy River, filed on the 6th of April, 1912, *it is ordered* That—

Whereas rule 10 of the Rules of Procedure of the International Joint Commission provides that within 60 days after the filing of any application the other Government may file a statement with the commission setting forth any fact or facts bearing on the subject matter of the application and tending to defeat or modify the order of approval sought; and

Whereas the time for filing such statement on behalf of the Government of Canada has long since expired; and

Whereas the Government of Canada now applies for leave to file such statement, which raises important questions of fact; and

Whereas under article 23 of the said rules the commission may extend the time for the filing of any paper; and

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Whereas substantial justice requires that the time should be extended for the filing of said statement by the Government of Canada:

This commission grants the application now made on behalf of the Government of Canada, allows the filing of a statement in behalf of the said Government, *nunc pro tunc*, provided that the said statement be filed at once and time be given to the applicants to reply to such statement.

The following statement in response to the application was filed by Mr. Thompson:

In the matter of the application of Watrous Island Boom Co. for approval of plans for boom in Rainy River.

To the Honorable the International Joint Commission, Ottawa, Canada, and Washington, D. C.

GENTLEMEN: The Government of the Dominion of Canada in response to the above application submits the following:

(1) The plans submitted by the applicants do not show the true location of the piles and the proposed boom. The true location is shown on the plan prepared by the public works department of Canada, which is filed herewith. It shows that the proposed boom crosses and recrosses the Rainy River.

(2) The international boundary line in the Rainy River has not been fixed, and until this has been done it can not be ascertained to which jurisdiction the applicants are subject.

(3) On the plan prepared by the department of public works it is shown that pile-driving has already been done and that the piles are not in the position shown on the plans submitted by the applicants. For example, at Laurel, a small wharf 3,000 feet east of Big Fork River, the applicants' plan shows the piles running to the wharf, but on the plan of the department of public works the boom is 300 feet from the wharf.

(4) From the meager soundings shown on the various plans of the river it is impossible to say where the boom should be placed in the interest both of navigation and of the applicants.

(5) Steamers using the north side of the river are obliged to make frequent stops to land and take off passengers by running the bow of the vessels on the shore, and this must be done with the bow upstream. In many places the boom is so close to the north shore that a vessel going downstream has not room to turn in order to make a landing. This is shown on the plan of the department of public works.

(6) At the present time, steamers can not use the river exclusively on the north side of the piles, and the Canadian Government submits that judgment should be withheld until a survey of the river has been made to determine whether or not steamers can use the north half of the river.

(7) The plan filed by the applicants shows that an 8-foot channel is to be dredged below Big Fork River. This will alter the natural level and flow of the water, and the extent to which the natural flow will be affected should be first determined.

(8) There should be some rule as to what procedure is to be adopted to have the river cleared sufficiently for safe navigation.

(9) It should be possible to allow the applicants privileges in the river so as not to unduly interfere with navigation.

Dated at Ottawa, the 13th day of November, 1912.

The Honorable C. J. DOHERTY,
Attorney General for the Dominion of Canada.
By JOHN THOMPSON,
His Solicitor Herein.

At a meeting of the commission held at Detroit, Mich., on February 20, 1913, the following order was adopted:

Ordered, That in the matter of the application of the Watrous Island Boom Co. for the approval of the commission of its proposed plan for construction of a boom in the Rainy River, to be located on the American side of the said river, the secretaries of the commission be and they are hereby directed to address the applicant for such approval and those who oppose the same, and inquire of them under Rule No. 15 of the rules of procedure of the commission, whether or not the construction of said boom as proposed will affect the natural level or flow of the waters of said river at or in the said boom on the other side of the line, and, if so, to what extent.

The secretaries having complied with the directions of the commission contained in the foregoing order, the following replies to the inquiry contained in said order were received:

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TORONTO, *March 14, 1913.*

LAWRENCE J. BURPEE, Esq.,
Secretary, International Joint Commission, Ottawa, Ontario.

MY DEAR SIR: I have the honor to acknowledge receipt of your favor of the 3d instant with inclosure.

I have consulted with our clients and I have been instructed to say to you, in answer to the inquiry made, that the construction of the boom as proposed by the Watrous Island Boom Co. will affect the flow and natural level of the waters of the river at or in the boom on the Canadian side of the line.

Our clients are unable to say to what extent this will occur, as it will necessarily depend upon circumstances and conditions, but it is said that in any event it must necessarily have the effect mentioned to an appreciable and material extent.

I remain, yours, very truly,

GEORGE H. WATSON.

MINNEAPOLIS, MINN., *March 15, 1913.*

L. WHITE BUSBEY,
International Joint Commission, Washington, D. C.

MY DEAR MR. BUSBEY: Replying to your favor of March 1 submitting on behalf of the joint commission the following inquiry:

"That in the matter of the application of the Watrous Island Boom Co. for the approval by this commission of its proposed plan for the construction of a boom in the Rainy River to be located on the American side of said river, the secretaries of the commission be and they are hereby directed to address the applicant for such approval and those who oppose the same, and inquire of them, under Rule 15 of the rules of procedure of the commission, whether or not the construction of said boom as proposed will affect the natural level or flow of the waters of said river at or in the said boom on the other side of the line, and, if so, to what extent."

I beg to advise that I have submitted the same to A. B. Colburn, one of the agents of the International Boom Co., which, if I mistake not, is one of the objectors to the granting of the application of the Watrous Island Boom Co. for the construction of such boom in the Rainy River, and which is also a corporation, as the records show, largely engaged in the navigation of such river, and am advised by Mr. Colburn as follows:

"I do not think that a boom placed in the Rainy River on one side of the river will affect the rise or fall of the water at all. In my opinion, the joint commission have in mind the contention of ours that the way the water was handled the past year in the management of the Watrous Island boom did affect the natural flow of the water in the Rainy River, especially at the mouth of the Big and Little Fork Rivers. I would consider this an important feature in the granting of the application for the boom, as to their right to entirely shut off the water at times at International Falls and in that way affect the flow of water to the detriment of others."

I trust this answers the inquiry of the commission, but inasmuch as I appeared before the commission at the hearing held at International Falls, where this matter was under discussion, I feel that I may be permitted to further suggest that objections on behalf of the International Boom Co. and others similarly situated were not only to the placing of the boom and the impeding of navigation in the Rainy River by reason thereof, but also to what objectors believed to be the willful mismanagement of the dam at International Falls, whereby the Rainy River below that point was made unnavigable to such an extent that the waters flowing into the Rainy River from the Big and Little Fork Rivers flowed away from the Lake of the Woods, and all to the great damage of the persons protesting against the erection of such boom.

If the foregoing does not meet the desire of the commission, kindly advise me and I will see that any information in our possession is at once furnished.

Very truly, yours,

POWELL & SIMPSON.

MINNEAPOLIS, MINN., *March 20, 1913.*

The honorable INTERNATIONAL JOINT COMMISSION.

GENTLEMEN: In response to the question submitted by you whether the booms of the Watrous Island Boom Co. in Rainy River do or will affect the level or flow of water at or in the said boom on the other side of the line, the company respectfully states that its booms do not and will not affect such flow or level, as it is informed and believes.

Respectfully submitted.

WATROUS ISLAND BOOM CO.,
By C. J. ROCKWOOD, *Attorney.*

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HEARING AT WASHINGTON, APRIL 2, 1913.

The International Joint Commission met in Washington, D. C., April 2, 1913, all members present. Mr. Tawney presiding.

The application of the Watrous Island Boom Co. was taken up for consideration and the following entered appearances:

For the Dominion of Canada: John Thompson, K. C.

For the Province of Ontario: Frank H. Keefer, K. C.

For the department of public works, Ottawa: S. J. Chapleau, C. E., and William J. Stewart, C. E.

Mr. TAWNEY. Mr. Thompson, the commission understands that you have something to suggest in regard to the application of the Watrous Island Boom Co. The other side is not represented, but they have asked for a continuance of further consideration on their application, claiming that all of the opposition on the American side has within the last week been withdrawn. We understand that you have some suggestion that you wish to make to the commission regarding the subject matter of this application. You may do so at this time if you wish.

STATEMENT OF JOHN THOMPSON, K. C.

Mr. THOMPSON. I have a statement here which sets out the views of the department of public works of Canada, and, briefly, the suggestion they make is that the matter should be referred to the Corps of Engineers of the United States and to the engineers of the department of public works of Canada to ascertain what piles, if any, obstruct the navigation, and make arrangement for the temporary removal of those piles until such dredging has been done as may be necessary to make navigation safe. That, briefly, is the gist of the statement which, with the permission of the commission, I would like to read.

Mr. TAWNEY. You may do so.

Mr. THOMPSON. The statement sets forth the history of this matter and also certain objections to the boom as it now exists. It is somewhat difficult to formulate our objections specifically, because, in the first place, the plans which have been filed by the applicants are very inaccurate and on a small scale. They are such, in fact, that it is impossible for one not on the ground to locate the various clusters and piles which are a menace to navigation. In the second place, the international boundary line in this river has not yet been determined, and until that has been done it is impossible to say which part of this boom is in Canada and which part is in the United States.

Mr. STREETER. Mr. Thompson, what is the general view as to where the international boundary line is in the river? Is it in the center of the river or in the center of the navigable channel?

Mr. THOMPSON. I am proceeding on the assumption that it is in the center of the river.

Mr. POWELL. Does the treaty say anything about it?

Mr. THOMPSON. I think not, sir.

Mr. POWELL. In the absence of the treaty the international law says the center of the channel.

Mr. THOMPSON. I am advised by Mr. Chapleau, the engineer who is here representing the department of public works, that it is not

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yet quite clear where the boundary line is. I have here a letter from the chief astronomer addressed to the district engineer of the public works department, which reads as follows:

S. J. CHAPLEAU, Esq., C. E.,
Department of Public Works, Ottawa.

DEAR SIR: I beg to acknowledge receipt of your letter of the 8th instant, inquiring as to the definition of the boundary line in Rainy River, whether it follows the line midway between the banks or the middle of the channel.

The description by the commissioners under the seventh article of the treaty of Ghent appears to point to the former as the correct definition, though the charts accompanying the description might possibly be held to constitute therefor the arbitrary line drawn by the commissioners along the river.

The matter has not yet been the subject of a formal decision by our commission. I have written to the United States commissioner asking him to agree to a formal definition, but have not yet had a reply.

Yours truly,

W. F. KING, *Chief Astronomer.*

So the matter apparently is in doubt as to where the international boundary line goes.

Before proceeding with the statement that I wish to read I might say that the public works department realizes that the industry carried on by these applicants is the largest in that country, and it is carried on on both sides of the line. Both in the United States and Canada their operations are very extensive, and the department does not object to their having this boom. They realize that the industry is of paramount importance in the district, but, at the same time, they consider that it is possible for the applicants to have such a boom and to have it in such a manner as would be consistent with free navigation.

The statement is as follows [reading]:

The Watrous Island Boom Co. has received a permit from the Secretary of War to construct and maintain a boom in Rainy River between the mouths of Black and Little Fork Rivers in the following lines:

"This is to certify that the Secretary of War hereby gives permission to the said Watrous Island Boom Co. to construct booms and to dredge in the said Rainy River, as shown upon said plans, so far as the said booms and dredging affect navigable waters of the United States, subject to approval by the International Joint Commission and to such conditions not concerning the interests of navigation which the said commission may prescribe, and subject to further conditions as follows:

"1. That the work herein permitted to be done shall be subject to the supervision and approval of the Engineer officer of the United States Army in charge of the locality.

"2. That if at any time in the future it shall be made to appear to the Secretary of War that the structures herein authorized are unreasonable obstructions to the free navigation of said waters, said licensee will be required, upon due notice from the Secretary of War, to remove or alter the same so as to render navigation through said waters reasonably free, easy, and unobstructed.

"3. That the work is to be executed as shown upon the plan hereto attached.

"4. That where the navigable channel is inclosed in the boom, a channel 200 feet wide and 8 feet deep at mean low water shall be dredged outside the boom for the accommodation of boats.

"5. That all work, except dredging, shall be completed before the opening of the navigation season of 1912.

"6. That all dredging shall be completed before the end of the navigation season of 1912.

"It is understood that this instrument simply gives permission under said act of Congress to do the work herein authorized; that it does not give any property rights, and does not authorize any injury to private property or invasion of private rights."

The company only received this permit on the 3d of April, 1912, although by section 10 of an act of Congress approved 3d of May, 1899, entitled "An act making appropriations for the construction, repair, and preservation of certain public works on rivers and harbors and for other purposes"—

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"It is provided that it shall not be lawful to build or commence the building of any wharf, pier, dolphin, boom, weir, breakwater, bulkhead, jetty, or other structures in any port, roadstead, haven, harbor, canal, navigable river, or other water of the United States, outside established harbor lines, or where no harbor lines have been established, except on plans recommended by the Chief of Engineers and authorized by the Secretary of War; and it shall not be lawful to excavate or fill, or in any manner to alter or modify the course, location, condition, or capacity of any port, roadstead, haven, harbor, canal, lake, harbor of refuge, or inclosure within the limits of any breakwater or of the channel of any navigable water of the United States, unless the work has been recommended by the Chief of Engineers and authorized by the Secretary of War prior to beginning the same."

The boom consists of a row of pile clusters, five to seven piles in each cluster, stretching from the mouth of Black River to that of Little Fork River, a distance of 10½ miles. These clusters are about 250 feet apart and are connected by logs and chains. Gaps have been left in the boom for the passage of boats, etc., and at other places additional clusters have been driven for the purpose of forming sorting gaps.

The boom is approximately in the middle of the river, but may be on either side of the boundary.

In the construction of the boom it is contended that:

1. It is not kept to the south side of the middle of the river, which is supposed to be the boundary line, and therefore comes into Canada.

2. That as the deep water or navigable channel is at times close to the south bank and at others close to the north bank, the boom interferes with the free navigation of the river.

As part of this work has been constructed in Canada it is necessary to get some authority for it, and as it was undertaken and completed before any application was filed, it becomes necessary to have an act of Parliament passed to enable the department of public works to approve of the works. With no permit therefore, and no act of Parliament, the company has no status.

Many complaints have been received from the navigation interests, both by letter and personally, that the boom interferes with free navigation. These companies are Canadian and of course lodge their complaints in Ottawa. Where the obstructions are upon the Canadian side of the middle of the river Canadian authorities can deal with the matter, but nearly all that interefere with navigation are in United States water. Canadians have equal rights to the free use of the river with citizens of the United States, but the Canadian Government can deal only with obstructions on its own side of the boundary, which has not been definitely marked. It is therefore impossible for the Canadian authorities to remedy the trouble.

The permit of the Secretary of War authorized the company to dredge channels in localities outside the boom that are too shallow, but as the boom is close to the boundary line there is seldom sufficient space in United States waters to do this.

In other localities, owing to piles of bowlders on the bottom, navigation is extremely dangerous in the river outside the deep-water channel blockaded by the boom.

The company, through its solicitors, has made application for approval of the works, but no satisfactory plan has been deposited with the department of public works as called for by chapter 115, R. S. C., wherein all corporations applying for permission to do any work in navigable streams must first get approval of plans and location. As no plans of any service have been deposited it is impossible for any person to state whether or not the location is such as can be accepted.

Plans should show on a large scale all the shore line of the main river and a large portion of the tributaries; should show a good proportion of any prominent objects along the river, or in the absence of these permanent reference marks should be put in so that the boom can be referenced to something tangible. The plan should show soundings in sufficient numbers to enable competent persons to trace out the channel, and to be absolutely certain that the water outside the boom is navigable; the area where bowlders are suspected should be carefully swept.

The sketch plan submitted is so inaccurate that no one can locate upon it the clusters (represented by numbers) detailed by one of the steamer companies as being obstructions.

With no plans to show the amount of dredging necessary it is not possible to state whether the levels will suffer any material damage by the work, but, generally speaking, it may be stated that an enlargement of any discharge section in a river by dredging will materially affect the river levels above that section. This consideration alone would justify the International Joint Commission in claiming jurisdiction.

The department of public works has notified the solicitors for the company that it will require accurate detail plans of the river from which they can ascertain the positions of the piles and boom as well as any dredging.

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The department of public works, although the Watrous Island Boom Co. has constructed part of its boom in Canada without any authority and has obstructed the navigable channel, is not desirous of standing upon its rights and compelling the removal of all piles in Canada until proper authority is obtained.

At the same time the department feels that navigation is interfered with and that relief can not be obtained immediately by dredging. It therefore, pending the filing of the requisite plans, suggests that an arrangement be made by the representatives of the United States Corps of Engineers and the department of public works to visit the district, mark upon the sketch plan submitted the piles, with numbers that obstruct, and order their removal until such time as the plans can be prepared and authority obtained for dredging under proper regulations.

That statement is as concise as it could be put, and it is the view taken by the public works department.

Mr. POWELL. That emanates from the public works department?

Mr. THOMPSON. Yes, sir; that is their view.

Mr. STREETER. Mr. Thompson, who are the parties directly interested in the construction of this boom? In the first place, of course, there are the two Governments with their rights. The company that has been referred to here I assume is the one for which Mr. Rockwood is attorney. Now, what other private interests are concerned outside of the navigation interests, if you know?

Mr. THOMPSON. The objections apparently which have come to the notice of the department are from the navigation interests and the navigation interests only.

Mr. STREETER. Is there not some other boom company or lumber interest that is objecting to this?

Mr. THOMPSON. Mr. Chapleau is very familiar with this subject, and possibly he can give the commission further information.

Mr. CHAPLEAU. I have never heard of any other interests.

Mr. STREETER. Mr. Chairman, here is a question with reference to our jurisdiction of the subject matter that apparently depends upon the question of whether the level or flow is affected by the proposed works. Now, we can not determine that question to-day. One party says it is and another party says it is not. There must be a hearing upon that, and, taking the suggestion that comes here, while it may be in a way outside our real powers, is it feasible to ask these parties to come here, and may we not be instrumental in bringing them to an arrangement with each other with reference to looking this matter over and getting together, so far as operations this summer are concerned? While it may be beyond our real powers, can not we do a real service to all these parties by getting together Mr. Rockwood's people, Mr. Watson's people, and these gentlemen representing the Canadian interests, and making some modus vivendi here until we can get along?

Mr. TAWNEY. In line with that suggestion, Mr. Streeter, this thought occurs to me which would save the time and the expense of the parties interested as well as that of the commission: It would be entirely competent, in my judgment, to refer this application, by order of the commission, to two members of the commission, authorizing them to take testimony or do any other thing necessary for a complete and final determination of the question of our approval or disapproval. That order could be made even in the absence of any of the parties, and, if it were made, then the two members of the commission selected for that purpose could go on the ground and get the parties all together and take testimony on this question of fact as to whether or not the level or the flow of the river is affected

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for purposes of determining the jurisdiction and report to the commission. Then the commission could dispose of it.

Mr. STREETER. I want to withdraw my suggestion, because the suggestion of the chairman is very much more practical and speedy in its operation than the one I offered. It seems to me, gentlemen, that that is a practical way of disposing of this matter for the time being to the satisfaction of all parties interested.

Mr. TURNER. There is one view of the matter that strikes me, and I would like to suggest it to Mr. Thompson. This application is for a prospective boom according to the plans. This commission really has nothing to do with the boom already in the river, which is partly on the Canadian side and partly on the American side. It has no powers of a court to abate a nuisance in the river there. All that it can do is to consider the plans presented to it with respect to the boom and either allow them or disallow them. If it allows them, I presume it has the right to make such changes in the plans proposed as would protect navigation, but so far as the reference of the paper that you just read to a boom already there is concerned and to abating portions of it that impede navigation, that is a matter, it strikes me, that belongs to the two respective Governments. The Government of Canada, through its authorities, can abate any portion of this boom on the Canadian side and the United States, through its authorities, can do the same thing on its side, but no power of that kind is committed to this commission.

Mr. TAWNEY. So far as the plans are concerned, of course the applicant, I presume, has authority under our rules to amend his plan or his application. My thought was that if that should become necessary he would then be required to so modify his plan as to what was deemed for the best interests of all concerned up there, both the navigation and the industrial interests. This would lead to a prompt settlement of the matter within the jurisdiction of the commission and within our rules.

Mr. TURNER. We undoubtedly have a right to refer it to the engineers to consider this plan and to advise us as to whether it ought to be modified in any way to aid navigation.

Mr. STREETER. Mr. Turner, do you see any reason of any kind why it is not wise for the commission to refer the whole subject to two commissioners, one from each side, to go there and take such testimony as they choose, find out all about the matter, and come back and make a report to us?

Mr. CASGRAIN. What are they going to find out? What is the issue between the two Governments?

Mr. STREETER. I am not looking at this thing in a technical way at all.

Mr. CASGRAIN. Then what jurisdiction have you to go there and make this investigation?

Mr. STREETER. Put it, if you please, on the ground that we want to find out whether we have jurisdiction or not, that is, whether the proposed works will affect the level or flow, using the language of the treaty, and I thoroughly believe that when these parties all get together there with somebody that they can sit down and go over the matter with they will come to an agreement among themselves with reference to this matter and get out of the way many difficulties.

Mr. CASGRAIN. That may be so, but the first thing that the Govern-

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ment of Canada says is, "Give us a plan, and when you do that we will be able to tell you what your further action should be."

Mr. STREETER. What I had in mind was, suppose Mr. Tawney or Mr. Magrath, or somebody else, goes there on the ground to hear all the parties. All these questions will be suggested and they can be solved, I think, to the satisfaction of most of them.

Mr. CASGRAIN. What is the suggestion of the department, Mr. Thompson?

Mr. THOMPSON. That a representative from the United States Corps of Engineers and one from the public works department of Canada go up together and see what ought to be done.

Mr. STREETER. The chairman supplements that by suggesting that two of the commissioners go there. The representatives mentioned could go with them.

Mr. TAWNEY. My idea was to keep the matter within the jurisdiction of the commission. They can take an engineer officer from our side and an engineer officer from the other side and then they can invite the parties themselves to appear, and take testimony on the question that is involved here as to whether it affects the flow or level of the river. The whole matter could be considered in that way and disposed of, I think, in line with the suggestion of our own Government. That would be in line with that suggestion, but the commission would keep its hands on the problem.

Mr. POWELL. We have adopted as a rule of procedure that it is nonsense to go into these matters and spend our time if the Government of one country is going to kick it all over by refusing its consent. We are here to get back to what we called you here this morning for, to know whether you want a postponement of this thing or not, or do you want it to go right on now?

Mr. THOMPSON. Go on in what respect?

Mr. POWELL. In respect to a hearing. To what time do you wish it postponed?

Mr. THOMPSON. I could tell you that, sir, after we get the plans by the applicants. I am not in a position now to say that pile No. 1, or pile No. 40, or pile No. 80 ought to come out and a channel ought to be dredged in another place.

Mr. POWELL. I presume from the correspondence there that the Dominion Government is willing that the boom should come out. That is evident from the correspondence, so we might go on in the face of that. We want to do something, and not be merely marching up the hill and marching down again. Do you want this thing postponed to a time to be fixed by the chairman when we are ready to take it up?

Mr. THOMPSON. I could not say now, sir, that I would be prepared to go on on a fixed day.

Mr. POWELL. But you do not want it taken up to-day, at this session?

Mr. THOMPSON. No, sir.

Mr. POWELL. There is another question I would like to ask you. While I have not looked at the act lately, I believe our chapter of the consolidated statute is intraterritorial. Is that correct?

Mr. THOMPSON. Yes, sir.

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Mr. POWELL. No consent, then, or action of the Dominion Government could affect the question so far as the intraterritorial interests of the United States are concerned?

Mr. THOMPSON. None whatever.

Mr. CASGRAIN. Mr. Thompson, do you find that there is any objection to the suggestion made here by Mr. Tawney, that two members of the commission be appointed who might join with the representative of the United States and the representative of Canada to find out whether there are any serious objections to the construction of the boom, or anything which would prevent the commission from giving its approval to the plan?

Mr. THOMPSON. No, sir; we do not object to the boom; it is only the manner in which it has been constructed.

Mr. TAWNEY. But Mr. Casgrain's question refers to the plan of procedure.

Mr. THOMPSON. That would be quite satisfactory.

Mr. TURNER. We have nothing to do with the boom already constructed. We have to do with the boom to be constructed. We can not deal with a boom already there or order it out. We have to assume that this boom, if there is one already there, is going to be made to correspond to the plans submitted to us. Now, if those plans trench on Canadian territory, or if they unduly obstruct navigation, that is what we have to deal with.

Mr. THOMPSON. It might shorten the proceedings, and probably would, as the chairman suggests, to visit the ground. It would take the applicants some time to prepare detailed plans of the river.

Mr. TURNER. I think two commissioners talking for some engineers up there would be like the fifth wheel to a coach.

Mr. STREETER. Mr. Turner, I would like to agree with you, but I do not. The attitude of these people here and the attitude of the Canadian Government, as indicated through the public works department, recognizes the importance of the business interests there. We can appoint two commissioners and refer the whole subject to them, not for final decision, but to go up there and come back and make a report on it. I thoroughly believe that when these parties get together with the representatives of Canada and the other interests and they get a chance to talk they will work out a solution.

Mr. TURNER. They have a chance to get together and talk without a couple of commissioners going up there to herd them together.

Mr. THOMPSON. Mr. Chapleau informs me that he would not require a detailed plan. He can go with a United States Army engineer, and settle between themselves as to what should and what should not come out.

Mr. CASGRAIN. We haven't anything to do with that. We can not order any piles taken out. I can not understand why the department of public works does not take the initiative in this matter by having those piles taken out, if they are on our side and put there without any authority.

Mr. MAGRATH. They can not do it so long as they do not know where the boundary line is.

Mr. CASGRAIN. Mr. Thompson, here you file a paper in which you say that the international boundary line in the Rainy River has not

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been fixed, and until this is done the question of jurisdiction can not be ascertained. Now, suppose the engineers go up there with two commissioners; can they determine anything?

Mr. THOMPSON. They can not determine whether the boom is on the Canadian side or the United States side. This suggestion is made in order not to hamper the applicants.

Mr. TAWNEY. They might do this: If two commissioners should go up there with representatives from both Governments and the representatives from the parties at interest and find that the level of the water is raised, or the flow is affected by the construction or maintenance of the boom there, which would then give this commission jurisdiction over the application; and then if the parties themselves agree as to where these piers should be located in the interest of navigation and they adopt that plan and so amend the plan we have before us at the present time to conform to what the agreement is, the commission, when the report of the two members is made, could approve the plan as amended.

Mr. THOMPSON. And as to the localities in which the dredging ought to be done. I think that would be the most efficient way of settling the difficulty. If I were to hazard a guess, it would be that a mere boom would not affect the level, but dredging probably would do so.

Mr. POWELL. Suppose it were full of logs.

Mr. CASGRAIN. It might raise the level considerably.

Mr. THOMPSON. This is not a boom to contain logs.

Mr. POWELL. It is both a sorting boom and a storage boom. To illustrate: I saw places there where two-thirds of the river was covered with a boom. Supposing that is so, I imagine that the logs would probably raise the level of that river say 6 inches. It would also make the current run faster on the American side or the Canadian side as the case may be. If this is the case, it would be an interference.

Mr. TURNER. It is the boom itself that we must consider with reference to its effect upon the level or the flow of the water. I think very likely it is true that if the dredging of the channel is a necessary adjunct of this boom that that would have the effect of altering the level and the flow.

Mr. POWELL. Can not the logs themselves be regarded as an obstruction apart from the boom?

Mr. TURNER. That is a question I am not prepared to answer now. It seems to me that if we send two commissioners up there now they will be in the dark as to how to proceed. Will that boundary line be established this summer, do you think?

Mr. MAGRATH. Yes; I think so; at least they will be working along there this summer.

Mr. TURNER. My recollection is that the treaty runs the line with reference to certain islands in the river—on one side or the other of certain islands—and then from that to the nearest stretch of islands, and so on. Is not that the way the treaty reads, Mr. Chapleau?

Mr. CHAPLEAU. I think they will do that part of the river in the same way they did the St. Lawrence River. They ran a line there in the center of the river. They established a point on that line by permanent monuments along shore which are cut in different angles.

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Mr. TURNER. But this treaty of 1846 establishing a line down the Rainy River establishes it with reference to the islands and natural monuments.

Mr. CHAPLEAU. No, sir; I think not.

Mr. TURNER. I thought it was rather specific in stating that it would go north or south from certain islands and thence to another group of islands.

Mr. CHAPLEAU. Not in the Rainy River.

Mr. TURNER. I do not see how we could proceed intelligently until that line is established, and if both sides want an adjournment I think we ought to grant it. The only thing I was thinking of was the navigation interests. From the first letter that was read here this morning I understand that as conditions are there now navigation would be almost impossible, and it is in the interest of navigation that this matter ought to be disposed of as soon as possible.

Mr. THOMPSON. Apparently there are quite a number of these piles or clusters that interfere. There is a statement here prepared by one of the navigation companies of Fort Williams which contains a list of the piles that do interfere.

Mr. CASGRAIN. What can we do with that?

Mr. THOMPSON. You can not do anything. I was just pointing out that navigation is interfered with. On the other hand, while these piles do seriously interfere with navigation, the department does not wish to say order out all the piles on the Canadian side. They make this suggestion of an amicable settlement.

Mr. STREETER. Is there anything further that you or the representatives of Canada or the Public Works Department want to suggest, Mr. Thompson?

Mr. CHAPLEAU. As I understood our deputy commissioner, the idea was that if we could get a United States Engineer Corps man and an officer from our department to go there and pick out these piles that ought to come out that both sides could arrange that with the boom company and they take out the piles. We thought we could get things done quicker in that way.

Mr. TURNER. Is it the desire of the Canadian Government to have this matter disposed of as soon as possible?

Mr. CHAPLEAU. Yes; to help out both sides.

Mr. TURNER. I have no doubt that the Chief of Engineers of the United States would cooperate with the engineers on the Canadian side in picking out any of these piles that ought to come out, because it is an illegal obstruction on this side, not having been authorized by this commission. They would have to remove anything that the United States engineers required them to take out.

Mr. CHAPLEAU. The same way on the Canadian side.

Mr. TURNER. It could be done by officers of the two Governments getting together and discussing it, but we haven't any power to send anybody up there to order anything out.

Mr. THOMPSON. Could it not be done on the suggestion of this commission?

Mr. CASGRAIN. There is something in that. I was going to suggest that myself. We could say that we do not know where we stand, that the boundary has not been fixed yet, but we think that the two Governments should get together and say, for the present at least, what should be done to further the interests of navigation.

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Mr. TAWNEY. There is this to be taken into consideration, gentlemen: There is a question of fact here on which the jurisdiction of this commission to consider the application at all rests. Now, at this session we could at least dispose of this question as to when and how we shall proceed to take the testimony for the purpose of determining that fact.

Mr. STREETER. Mr. Chairman, if Mr. Chapleau and Mr. Thompson have nothing more to present on that subject, I suggest that we have an executive session of the commission..

Mr. MAGRATH. Before we go into executive session, I would like to ask Mr. Thompson on what date the department of public works asked for plans. The plan that accompanied this application is no good. No engineer could take this plan and go and locate the dam, and the public works department, as stated by Mr. Thompson this morning, has asked for plans.

Mr. CHAPLEAU. I have not that information on my files. I make my report to the chief of engineers and he sends it to the deputy minister, who advises the counsel for the applicant.

Mr. POWELL. Mr. Chapleau, in some way or other there is a plan that has disappeared. I was up there myself with Mr. White and other engineers and there was produced for our inspection a plan. It was nearly as long as this table and on it was marked by the public works department of Canada certain piers that ought to be removed, which piers were marked on the plan in red. While we were there they were engaged in destroying these piers with dynamite. Now, where is that plan?

Mr. CHAPLEAU. Here is the original [showing a plan].

Mr. TURNER. That is a plan of what was actually there, is it?

Mr. CHAPLEAU. Yes, sir; this was made from an actual survey.

Mr. TURNER. And it shows the boom as it actually existed?

Mr. CHAPLEAU. Yes, sir.

Mr. THOMPSON. With reference to Mr. Magrath's question as to the date when the plans were called for, apparently there was a letter written by the department of public works in April, 1912. There is a letter here from Mr. Backus to the department answering the Secretary's letter of April 10. It goes on to say that "plans ought to have been submitted to your office long before this." That is about a year ago. Following this letter in the file comes the plan which the commission has before it.

Mr. TURNER. I understand, Mr. Thompson, that you accede to the suggestion to continue the matter?

Mr. THOMPSON. Yes, sir.

Mr. TAWNEY. If that is all you have to present, Mr. Thompson, the commission will now go into executive session.

Thereupon the commission went into executive session.

After the executive session the commission adopted the following orders:

Ordered, That the questions growing out of the application of the Watrous Island Boom Co. for approval of its plans for the construction of a boom in the Rainy River be referred to two members of the commission to investigate, and, if in their opinion desirable, to take such testimony as they may consider necessary to be laid before the commission for its final determination of the question whether such application should be approved in whole or in part; and to fully report the facts, together with such evidence as may be taken, to the commission as soon as may be; and that the

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further consideration of the application be continued to a date to be fixed by the chairmen.

Ordered, That Mr. Tawney and Mr. Casgrain be appointed to act under the foregoing order.

It appearing to the commission that the plans attached to the application of the Watrous Island Boom Co. should be more full, definite, and complete,

Ordered, That the applicant file with the commission, on or before May 1, 1913, an amended plan of the said boom on a scale not less than 300 feet to the inch, showing in detail the location in the stream of the proposed boom and the waters tributary to that portion of Rainy River inclosed within said boom, the plan to be sufficiently complete to enable the engineers to determine the exact location of the piles of said boom.

TESTIMONY TAKEN AT INTERNATIONAL FALLS, MINN.

The special committee of the International Joint Commission directed to take testimony under Orders 28 and 29 held a meeting at the courthouse of Koochiching County, at International Falls, Minn., on Tuesday, May 6, 1913, beginning at 10 o'clock a. m.

Present, James A. Tawney and Th. Chase Casgrain.

Mr. TAWNEY. Gentlemen, the International Joint Commission has met here for the purpose of considering the application of the Watrous Island Boom Co. for the approval by the commission of its proposed boom in the Rainy River from the mouth of Little Fork River to the mouth of Black River, a distance of between 8 and 9 miles. Mr. Casgrain, chairman of the commission on the Canadian side, and myself have been authorized by the commission to conduct the examination and hearing, for the purpose of taking testimony, if necessary, and to report to the full commission for its action respecting the matter of the approval of the proposed structure in the Rainy River. The order of the commission was made at Washington, D. C., April 2, 1913, and is as follows:

Ordered, That the questions growing out of the application of the Watrous Island Boom Co. for approval of its plans for the construction of a boom in the Rainy River be referred to two members of the commission to investigate, and if, in their opinion, desirable, to take such testimony as they may consider necessary, to be laid before the commission for its final determination of the question whether such application should be approved in whole or in part, and to fully report the facts, together with such evidence as may be taken, to the commission as soon as may be; and that the further consideration of the application be continued to a date to be fixed by the chairman.

Ordered, That Mr. Tawney and Mr. Casgrain be appointed to act under the foregoing order.

Mr. Casgrain and myself have deemed it necessary to take some testimony, and to hear the applicant with respect to the question of our approval of the plans, and also to hear those who may or do oppose the construction and maintenance of the boom as proposed by the plans submitted to the commission.

I may say, in this connection, that the War Department, on the 3d day of April, 1912, through the Secretary of War, approved of the boom as then proposed by issuing the following permit:

WATROUS ISLAND BOOM CO.

Whereas, by section 10 of the act of Congress approved March 3, 1899, entitled "An act making appropriations for the construction, repair, and preservation of certain public works on rivers and harbors, and for other purposes," it is provided that it shall not be lawful to build or commence the building of any wharf, pier, dolphin, boom,

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weir, breakwater, bulkhead, jetty, or other structures in any port, roadstead, haven, harbor, canal, navigable river, or other water of the United States, outside established harbor lines, or where no harbor lines have been established, except on plans recommended by the Chief of Engineers and authorized by the Secretary of War; and it shall not be lawful to excavate or fill, or in any manner to alter or modify the course, location, condition, or capacity of any port, roadstead, haven, harbor, canal, lake, harbor of refuge, or inclosure within the limits of any breakwater, or of the channel of any navigable water of the United States, unless the work has been recommended by the Chief of Engineers and authorized by the Secretary of War prior to beginning the same; and whereas the Watrous Island Boom Co., a corporation organized under the laws of the State of Minnesota, has applied to the Secretary of War for the approval of plans, hereto attached, for booms in Rainy River, between the mouth of Little Fork River and the mouth of Black River, in the State of Minnesota, for storing, handling, sorting, and loading logs and forest products, which plans have been recommended by the Chief of Engineers;

Now therefore, this is to certify that the Secretary of War hereby gives permission to the said Watrous Island Boom Co. to construct booms and to dredge in the said Rainy River, as shown upon said plans, so far as the said booms and dredging affect navigable waters of the United States, subject to approval by the International Joint Commission and to such conditions not concerning the interests of navigation which the said commission may prescribe, and subject to further conditions as follows:

1. That the work herein permitted to be done shall be subject to the supervision and approval of the engineer officer of the United States Army in charge of the locality.

2. That if at any time in the future it shall be made to appear to the Secretary of War that the structures herein authorized are unreasonable obstructions to the free navigation of said waters, said licensee will be required, upon due notice from the Secretary of War, to remove or alter the same so as to render navigation through said waters reasonably free, easy, and unobstructed.

3. That the work is to be executed as shown upon the plan hereto attached.

4. That where the navigable channel is inclosed in the boom, a channel 200 feet wide and 8 feet deep at mean low water shall be dredged outside of the boom for the accommodation of boats.

5. That all work, except dredging, shall be completed before the opening of the navigation season of 1912.

6. That all dredging shall be completed before the end of the navigation season of 1912.

It is understood that this instrument simply gives permission under said act of Congress to do the work herein authorized; that it does not give any property rights, and does not authorize any injury to private property or invasion of private rights.

Witness my hand this 3d day of April, 1912.

ROBERT SHAW OLIVER,
Assistant Secretary of War.

I will say, also, that at the last session of the commission, the commission ordered the applicant to prepare and file, by May 1, a new map, showing the exact location of the boom piers and boom logs, and on a scale that would enable the commission to more fully understand the proposed work and its effect upon the navigation of the river. That map has been filed, and was used yesterday by the members of the commission who went down the river for the purpose of personally inspecting the boom as now located.

Mr. Rockwood, I believe, represents the applicant. If there are any persons here who represent interests that are opposed to the construction and maintenance of the boom, they may enter their appearance now, and they may be heard after the applicant has been heard.

Mr. GEORGE A. GRAHAM. The Rainy River Navigation will desire to be heard.

Mr. TAWNEY. Do you appear for them?

Mr. GRAHAM. Yes, sir.

Mr. TAWNEY. I will say that notice of this meeting has been given by me to all parties who appeared before the commission last September at International Falls and who at that time stated that they

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were interested in the subject matter of this application. I understand that notice was also given on the Canadian side.

Mr. CASGRAIN. Mr. Chapleau and Mr. Jamieson are here, representing the department of public works of the Government of Canada.

Mr. TAWNEY. Now, Mr. Rockwood, you may proceed.

C. S. GILES, having been duly sworn, testified as follows:

Examined by Mr. ROCKWOOD:

Q. Where do you reside, Mr. Giles?—A. At International Falls.

Q. What is your profession?—A. Civil engineer.

Q. You have been such for how long?—A. Twenty-odd years.

Q. And are engaged in that profession now?—A. Yes, sir.

Q. What companies are you employed by at present?—A. By the Minnesota, Dakota & Western Railway Co. and by the Watrous Island Boom Co.

Q. How long have you been employed by those companies?—A. A little over a year.

Q. I call your attention to the map, a copy of that which has been filed in pursuance of the order of the commission made April 2, 1913, intended to show the location of the boom as it is, and which may be marked "Exhibit A." Was this map made under your direction?—A. The map was made under my direction; yes, sir.

Q. Who did the actual work on the ground?—A. Mr. Keating, Mr. Kibbey, Mr. Dehart, and myself.

Q. Who is Mr. Keating?—A. Canadian engineer on the other side.

Q. Son of the registrar?—A. Son of the registrar of titles over there.

Q. At Fort Frances?—A. Yes, sir.

Q. And Mr. Kibbey is what?—A. County surveyor here, and city engineer.

Q. County surveyor of Koochiching County?—A. Yes, sir.

Q. Will you state, Mr. Giles, what the map represents, with especial reference to the figures made on different lines from side to side of the river, and the line of circles with connecting lines?—A. The map shows the location of the boom and the piling as they are now located in the river. The soundings show the depth of the water in relation to the low-water mark at an elevation of 462 at the dam—458.88 at Laurel. The circles show the clusters of piles that are driven in the bed of the river, and the lines joining them show the location of the boom.

Q. Those connecting lines are made in the usual way, by boom sticks fastened end to end?—A. Yes, by boom sticks fastened end to end.

Q. Now, will you explain what is meant by the figures 462?—A. That is the reading of the water at the dam. That is practically the low-water mark that we have a record of here.

Q. That means 462 feet compared with what?—A. The 500-foot bench mark.

Q. That bench mark is located where?—A. At the canal, on the Canadian side.

Q. That was a bench mark established by whom?—A. I don't know. I have been using it ever since I have been here. It was in vogue when I came. I don't know who established it.

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Mr. TAWNEY. Do you know when it was established?

The WITNESS. I do not. It is the one that is commonly used in connection with all the water levels through here.

Q. Is the figure 500, which is assigned to the bench mark, an arbitrary figure?—A. What do you mean by an "arbitrary" figure?

Q. Has it been established with reference to the sea level, or——A. Oh, no. That is simply an arbitrary level, as I understand it. It does not refer to the sea level.

Q. And assuming the bench mark to be 500, the other elevations are referred to that as a fixed point?—A. Are referred to that as a fixed point.

Mr. CASGRAIN. Is that the bench mark that is under the bridge there?

The WITNESS. Yes, sir.

Q. The reading to which you referred, 458.88, was the level of the river at what exact point?—A. I can't tell exactly.

Q. But somewhere in the course of this boom?—A. It is right there at the Laurel Dock.

Q. The Laurel Dock is shown on the map?—A. Yes.

Q. Have you in any way personally verified this map, to determine for yourself whether it is accurate?—A. I have.

Q. And have you satisfied yourself that it is an accurate map?—A. It is an accurate map of the river; yes, sir.

Q. Now, these figures, again, from side to side of the river, taking, for illustration, the point near the center of section 5, where it reads 1.0, 8.9, 10.6, and so on, those refer to the depth of the water, as I understand, on those lines, when the water stood at 458.88?—A. Yes, sir; at the Laurel Dock; 462 at the upper point.

Q. And that was either the very low-water mark or substantially so?—A. It was reduced to that elevation. That is our record of low-water mark. It was reduced to that elevation to correspond to this portion down here [indicating] that the Canadian engineers had made at the time the other boom matter came up.

Q. You say "reduced to that elevation." I understood you that 462 was the actual elevation in February, 1912.—A. Yes, sir.

Q. It was the actual stage of the water.—A. Yes.

Q. And 458.88 was the actual stage at the Laurel Dock at the same time?—A. Yes, sir. Well, there was the time intervening that it took to run down there and find out.

Q. Now, I wish you would explain about the absence of the map that was prepared and furnished by the department of public works of Canada with reference to that section of the boom close to the mouth of the Big Fork River.—A. Do you mean the one I lost yesterday?

Q. Yes.—A. It dropped out of my overcoat pocket in the dining room of the camp. I telephoned down, and it has been located. It is on the way up here and will be here sometime this afternoon.

Mr. ROCKWOOD. That will be offered to the commission when it comes.

Q. That map which you had with you was traced from what?—A. From the blue print that was filed in the registrar's office in Fort Frances.

Q. With Mr. W. J. Keating?—A. Yes, sir. This portion here [indicating on Exhibit A] is a copy of it, except that it does not show

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the piling that the Canadian engineers asked us to remove and which we agreed to remove and which we did remove, and shows the location of the boom that they asked us to put in and which we did put in, and the location of the channel that should be dredged.

Q. When you say "this portion here," you refer to a portion of Exhibit A?—A. Exhibit A.

Q. Then I understand you to mean that the boom is now actually constructed exactly in accordance with the map furnished by the department of public works, as far as that map extended?—A. Yes, sir. In checking my soundings I checked up with them, too.

Q. Did you find that they corresponded?—A. They corresponded. It was made on a scale of 300 feet to the inch, and we connected right with this map.

Mr. CASGRAIN. What length of boom did that small map cover that you lost?

The WITNESS. It covered about 2½ miles, I should judge.

Q. Were those changes indicated on the small map the only changes which have been recommended by the department of public works?—A. They were the changes that were asked for by the department of public works of Canada.

Q. And the only changes?—A. And the only changes they asked for. From piling No. 27, I think it was, to a certain distance up the river, they asked us to remove; and they wanted the sheer boom removed at the Laurel Dock, and that has been done, and the piling in the channel that they wanted to be removed. The only thing that has not been done is the dredging of the channel, and the removing of those stone piers that you saw, of the sheer boom down there, which we have marked on the map "to be removed."

Q. Will you be kind enough to refer to Exhibit A, and to that portion marked "New channel," and state what that indicates?—A. That new channel is a channel to be dredged to a depth of 8 feet and a width of 50 feet on the bottom, below low-water mark.

Mr. TAWNEY. The dredging, according to the plan submitted to the War Department and in accordance with the permit of the War Department, provided for a channel 200 feet wide and 8 feet deep.

The WITNESS. If it did, this is the first I ever heard of it.

Mr. TAWNEY. It is the fourth condition:

That where the navigable channel is inclosed in the boom, a channel 200 feet wide and 8 feet deep at mean low water shall be dredged outside of the boom for the accommodation of boats.

I noticed that this morning, in reading the permit. I did not know whether there had been a misunderstanding about that or not.

Mr. ROCKWOOD. I don't think there is any misunderstanding about that. The Canadian Government suggested a different width than that suggested by the War Department.

Mr. TAWNEY. This would be on the Canadian side if the boundary were in the center of the channel, would it, or in the center of the river, either?

Mr. ROCKWOOD. In either case it is on the Canadian side; whether the geographical center of the stream or the deep channel is taken.

Mr. TAWNEY. This, then, would apply only to dredging within the jurisdiction of the United States, assuming that the boundary is mid-stream or mid-channel?

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Mr. ROCKWOOD. That is true. And since this permit of the War Department was issued, the boom at that point has been moved several hundred feet toward the Minnesota shore, in accordance with the requirement of the Canadian Government, so that no part of the channel is inclosed in the boom.

Mr. TAWNEY. Does the Canadian Government stipulate the width of the dredged channel and its depth?

Mr. ROCKWOOD. It does; yes.

The WITNESS. This [indicating on Exhibit A] was copied from the map that I showed you yesterday.

Mr. ROCKWOOD. That is the map that we have been searching for.

Mr. TAWNEY. That is a copy of the map prepared by the Canadian Government?

The WITNESS. By the Canadian Government engineers, for us to follow in that work down there.

Mr. ROCKWOOD. I don't think of any other questions that I care to ask Mr. Giles at present.

Examined by Mr. TAWNEY:

Q. On this portion of the river at the bend, lot 2, section 25, would it materially interfere with the operation of the boom if these two boom piers were moved south a little farther, so as to make the navigable channel there a little greater in width than it is now?—A. That is a pretty sharp turn there, and we get the brunt of the turn on the American side. The sharp part of the turn is on the American side; and to bring that in closer would naturally have a tendency to jam logs there.

Q. It also makes a short turn for the boats, too, does it not?—A. It does make a short turn for the boats, yes.

Q. What is the width of the boom at that point, according to your scale?—A. About 280 feet.

Q. What is the width of the channel at the same point?—A. About 165 to 170 feet.

Mr. CASGRAIN. I suppose if the way for the logs were made narrower it would mean that you would have to have more men there, probably, and have to do more work; that is all, isn't it?

The WITNESS: You would have to have more men. You would have to take care of the logs as they passed. With a sudden rush of logs coming down the river it might do like the ice did this year—clean them off.

Q. About 600 feet east of Watrous Island the width of the river is what?—A. About 800 feet.

Q. What is the width of the navigable channel there?—A. About 200 feet.

Q. What is the depth of the water there?—A. 11 feet—4 feet near the shore; and 11 feet, and 11, and then 5.

Q. Just east of that point where you have indicated the width, could that boom pier be moved south some distance so as to make this part of the channel a little wider than it is at the present time?—A. About as much as you could move it would be about 60 feet, and you would be in 5 feet of water. There is 5 feet of water right there [indicating] and 11 feet outside. They have got 100 feet of water right through there now.

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Q. You say that the width of the navigable channel there is how much? 200 feet, you said?—A. No, but the width across there, you said. The channel is about 150 feet wide there. But there wouldn't be much advantage in changing that.

Q. To navigation?—A. To navigation. Because the minute you move it in a little ways you are right up to low water mark, unless you dredge it out there. And there is plenty of room there to go through.

Q. Is that part of the boom included in the map prepared by the Canadian engineers?—A. Yes, sir.

Q. What is the width of the channel for navigation, just north of lot 2, section 30, indicated on Exhibit A?—A. About 170 feet.

Q. What is the width of the water that will be utilized for the boom there?—A. About 180. About 160 feet for the boat channel, and 180 feet for the log pond.

Q. What is the depth of the water at that point?—A. 7 near the Canadian shore; 12, 16, 15.5; then you strike the boom, and then there is 16, then 13, 14, 12.5, 11, 10, 2, and 0 at the American shore.

Q. Along the front of this lot it is comparatively a straight flow, is it not?—A. Yes, sir.

Q. Would there be any objection to widening the channel, say 10 or 15 feet, along that point, that is, the steamboat channel, by setting in, we will say five piers?—A. That is close to the mouth of the Little Fork River, and when the logs come down through there that is where we have got to do fast work to get them into the boom. To narrow that up would be liable to cause more live logs to get over into the main channel again.

Mr. CASGRAIN. That would mean that you would have to employ more men; that is all, isn't it?

The WITNESS. Sometimes they come there so fast that you can't do it with all the room you can get.

Q. Your log channel wouldn't be as narrow, even then, as it is farther up and closer to the mouth of the Little Fork. The width of the boom, almost at the Little Fork and opposite this island—what is the name of this island?—A. There isn't any name for it that I know of.

Q. The width of the boom opposite this island is considerably narrower than it is below, where I have suggested the possibility of narrowing the logging channel in order to widen the steamboat channel?—A. That would be from where to where?

Q. From the pier marked No. 1 down to the one marked 5.—A. In the handling of these logs and keeping them so we can get at them, we have to have as much area as possible; and wherever we could get out into the river, where the soundings showed we were not preventing navigation, we moved the boom out far enough so as to get this area, in order to store the amount of logs that we had to take care of.

Q. On yesterday, when we went down the river in company with the representatives of the boom company and also representatives of the navigation interests, these three points were about the only points where there was any complaint on the part of the navigation interests to the boom as it is now proposed and as constructed, and the purpose of my inquiry is to get information as to whether or not, if

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this steamboat channel at these three points could be widened a little, it would not remove all opposition and lead to an amicable adjustment of the matter and the final approval of the plan as it is, by both Governments?—A. Well, that could be done. It would reduce our area that much and if we could find some other spot in the river where we might go out a little farther and get the same amount of area. I don't know as there would be any particular objection to that. Maybe we could come around and do it that way. What do you think of that, Mr. Rockwood?

Mr. ROCKWOOD. I don't know that it is my opinion that is controlling. The changes that are suggested would not make a very appreciable difference in the area.

The WITNESS. In the storage capacity?

Mr. ROCKWOOD. No, not much; it would be slight.

Examined by Mr. ROCKWOOD:

Q. Will you state what is the acreage of the entire space inclosed between the outer line of the boom and the Minnesota shore, from the Little Fork down to the foot of the boom?—A. 305.3 acres.

Mr. CASGRAIN. What is the object of that question?

Mr. ROCKWOOD. I want to show, when Mr. Backus takes the stand, the capacity of the boom; that it is all needed—and more if we could get it.

Q. Now, you said that in this sharp bend against lots 1 and 2, section 25, some of the piling are out. Will you state exactly what the fact is?—A. Those piling were cut out during the time the ice came out of the Little Fork River.

Q. When?—A. This year.

Q. How many clusters of piles were taken out?—A. I think there were two cut out, and one is spread; that makes three in all.

Q. The two that were taken out entirely were the two farthest north?—A. The two farthest out in the stream; yes, sir.

Q. Well, the two farthest north?—A. The two farthest north, yes, sir.

Q. And the one that is bent over and partially out of commission is the one next below?—A. That is it.

Q. And the boom as it hangs now swings from the cluster next above the two that went out, directly to the one that is leaning over, spread out, and likely to go out?—A. Yes.

Q. So that the area inclosed as the commissioners saw it yesterday is a little less than it would be if those two clusters of piles were in as the map shows? (No response.)

Mr. CASGRAIN. Has this map (Exhibit A) been submitted to the Government of Canada?

The WITNESS. Not that I know of.

Mr. ROCKWOOD. I can state about that.

Mr. CASGRAIN. I would like to have you do so.

Mr. ROCKWOOD. It has not. We hastened all we possibly could in getting this map ready, and it did not reach me until the 1st day of May. I mailed two copies immediately to the Secretary at Washington, understanding that he would mail one of them to the secretary at Ottawa; but it hasn't otherwise been filed.

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EDWARD W. BACKUS, having been duly sworn, testified as follows:

Examined by Mr. ROCKWOOD:

Q. Mr. Backus, where do you reside?—A. I vote at Minneapolis.

Q. In what business are you engaged?—A. In the lumber business, the paper business, and some others.

Q. With what principal companies are you connected in the lumber business?—A. The International Lumber Co. and the Kewatin Lumber Co. (Ltd.).

Q. Are those companies engaged in manufacturing?—A. They are.

Q. Where are their mills?—A. At International Falls, Minn.; Spooner, Minn.; and Kewatin, Ontario.

Q. The International Lumber Co. in Minnesota——A. At the two points mentioned in Minnesota.

Q. And the Kewatin Lumber Co. (Ltd.) at Kewatin, Ontario?—A. Yes, sir.

Q. What is the annual capacity of the mills of the International Lumber Co.?—A. The reasonably full capacity is approximately 200,000,000 feet of sawed lumber per annum.

Q. How is it divided between the two mills?—A. This year we will probably cut at International Falls 80,000,000 feet of lumber; at Spooner, 60,000,000 feet of lumber; at Kewatin, 40,000,000 feet of lumber.

Q. What is the source of supply of logs for the International Falls mill?—A. The waters tributary to the Rainy River.

Q. Be more specific, please, and state on what tributaries the logs are cut, and how they are brought to the mill.—A. Largely the supply is secured on the Little Fork, Big Fork, and Black Rivers, which empty into the Rainy River. That supply is augmented more or less by logs brought in by the railroads.

Q. Logs that don't go into the water at all?—A. That don't go into the water at all.

Q. Will you explain how the logs are brought down these tributaries and how they are brought back to International Falls, and also what the office of this boom is in handling those logs?—A. I think you omitted to inquire as to the supply of pulp wood which the International Co. also handles for the paper mills at International Falls.

Q. You are president, also, of the Minnesota & Ontario Power Co., which manufactures paper at International Falls?—A. Yes, sir.

Q. What is its raw material?—A. Pulp wood.

Q. How many cords per annum?—A. For both mills—the one at International Falls and the one at Fort Frances, at their present capacity, 160,000 cords of wood per annum.

Q. Where is that cut?—A. This wood that you speak of is brought in from various directions; by all the railroads entering here, and also a large portion is put into the streams referred to a few moments ago—the Little Fork, Big Fork, and Black Rivers—and that wood is intermingled with the logs and driven into the Watrous Island Boom Co.'s boom and there hoisted and brought back by rail, together with the saw logs as they come to the sawmill.

Q. You are president, also, of the Watrous Island Boom Co.?—A. Yes, sir.

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Q. Where do the supplies of logs of the Spooner mill come from?—A. Almost entirely from the Little Fork, Big Fork, and Black Rivers.

Q. And they are collected in this boom and sorted, and afterward driven on down the Rainy River?—A. The method of handling this boom is to bring all of the logs and pulp woods into the boom, take out all the pulp woods if possible, and what logs are necessary to come to the International Falls sawmill, and haul them back by rail to the mills at International Falls and Fort Frances—both sawmill and pulp mills. The logs belonging to the mills lower down the river are then released, and they float on down to the other mills.

Q. Is that true of the logs for the Kewatin Lumber Co.?—A. It is partially true.

Q. Are there any other companies that cut on the Little and Big Fork and Black Rivers whose logs come down in a similar way?—A. Yes, sir.

Q. What companies?—A. The Engler Lumber Co. and the Rat Portage Lumber Co. are the principal ones. Then there are some operators in ties, and cedar poles and posts, whose timber comes down these rivers and goes on down the Rainy River to the point in the Rainy River at which the Canadian Northern Railroad crosses.

Mr. CASGRAIN. Where is the Shevlin-Mathieu Lumber Co. now?

Mr. BACKUS. They are out of business. We bought them out. That was the Spooner mill.

Mr. CASGRAIN. That is the reason they are not here?

Mr. BACKUS. Yes.

Mr. TAWNEY. That is the company that was represented by Mr. Powell, Mr. Simpson, and also by Mr. Watson?

Mr. BACKUS. Yes.

Q. Now, I understood you to say that all of the products—logs, poles, ties, fence posts, and so on, that are intended to go down the river are sorted out of the boom and turned loose by the Watrous Island Boom Co.?—A. Yes, sir.

Q. Does it get any compensation for that?—A. No, sir.

Q. Do you know approximately what quantity of logs the Engler Lumber Co. handles in this way—sends into this boom?—A. I should estimate the amount at 25,000,000 feet on the average annually; some seasons quite a little more, and some a little less, depending on the quantity of logs they carry over from one season to another. For instance, if this year they have left in their boom a greater quantity than is necessary, they might put in a little fewer next year; but an average of 25,000,000 feet.

Q. How many logs of the Rat Portage Lumber Co. come down in a similar way?—A. Practically the same amount; 25,000,000 feet, I should estimate it. That amount would vary, also.

Q. You heard Mr. Giles say that he thought the total acreage within the boom is 305 acres, including the sorting works, pockets, loading works, etc., at the foot?—A. Yes, sir.

Q. About what would be the capacity of that boom in feet of logs, if it were filled?—A. Depending upon the stage of the water and also size of the logs, I should estimate between 40,000,000 and 50,000,000 feet. If the water was high and the logs of good size, I think it would hold 50,000,000. If the water was low and the logs small, it would probably be taxed to its full capacity by holding 40,000,000 feet.

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Q. If the water is high, the capacity is greater, is it?—A. Yes, sir.

Q. That is because the current crowds them in more compactly? A. Yes, sir.

Mr. TAWNEY. Approximately what is the total number of feet of logs that this boom is used for the purpose of transporting down to the mills or to the railroad, annually?

Mr. BACKUS. I should estimate it at an average of 125,000,000 feet of saw logs and approximately 50,000 to 60,000 cords of pulp wood; besides ties, poles, and so forth—I couldn't estimate the quantity of that.

Mr. TAWNEY. What would be the approximate value of those saw logs and that pulpwood?

Mr. BACKUS. Probably $3,000,000 would be near as a figure as anyone could name.

Mr. TAWNEY. Approximately how much is there invested in mills and in timber by the companies that use this boom for the transportation of logs down the river either to the mills or to the place of loading them on cars?

Mr. BACKUS. I should put the amount at $20,000,000; that is, in all their diversified assets.

Q. These logs, of course, in this climate, have to be handled when there is no ice in the river. What is the length of the season in which the river is open?—A. Not to exceed six months, and often a lesser time than that.

Q. The river has been open this year for say three weeks now? Is that approximately right?—A. Yes, just about three weeks.

Q. Did it open earlier or later than usual?—A. About the average.

Q. Then the working season would be, say, from the middle of April to the middle of October, or something like that?—A. Yes, sir.

Q. Do the logs and pulp wood come down uniformly throughout that period, from the tributaries, or do they come more largely at one time than another?—A. In a rush.

Q. What is the reason for that?—A. On account of the necessity for driving the side streams into the main river when there is water in the tributaries.

Q. Then, they come on the freshets?—A. They come on the freshets, that is true.

Q. Is it possible to drive them out of those tributaries except on the freshets?—A. It is not.

Q. Now, is the capacity of 40,000,000 to 50,000,000 feet according to varying circumstances, which you have testified to, any greater than is necessary for the conduct of the business that has to be done there?—A. It is not sufficient to safely handle the business.

Q. By that you mean that if greater area and greater capacity were practicable, it would be a safe improvement to get the greater capacity?—A. It would.

Q. Now, I see that this boom closes in, at the Little Fork, with the Minnesota shore. What is the purpose of that?—A. The principal purpose is, so that any logs turned over through our dam at International Falls, from the lakes and waters above, can go straight down the river without being impeded.

Q. Do they run down the river in booms, or loose?—A. Loose.

Q. What companies transport the logs in that way out of Rainy Lake?—A. At the present time the principal company is the Rat

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Portage Lumber Co. In the past other companies have, and probably in the future other companies will.

Q. The International Lumber Co. has a mill at International Falls. Does it get any logs or pulp wood out of Rainy Lake?—A. Some; yes, sir.

Q. What is done with them when they come out of the lake?—A. They are put into the boom east of the sawmill.

Q. Not permitted to go down and through the dam?—A. No, sir. I took that all into consideration when I answered Mr. Tawney's question as to the number of logs that usually went through the Watrous Island Boom Co.'s works, in estimating the quantity as 125,000,000. I just estimated roughly the amount of logs that would come back to these mills from that boom. I estimated the logs of all parties going through this boom; ours as well as those of others.

Q. There are two mills at Fort Frances, opposite International Falls. To what company do they belong?—A. The Shevlin-Clarke Co. (Ltd.).

Q. And they get their logs from where?—A. East of Fort Frances.

Q. That is, they come out of Rainy Lake?—A. They come out of Rainy Lake.

Q. And are taken directly into their booms above their mills?—A. Yes, sir.

Q. They don't go down the river?—A. No, sir.

Q. Is there any means commercially possible and in any way practicable of handling the logs and pulp wood and supplying the mills that you have described that are supplied in this way, except with this kind of a boom?—A. Not that I know of.

Q. Is there any other place at which it would be feasible to locate such a boom?—A. No, sir.

Q. The reason for that, I take it, is apparent, that the logs come out of these three streams, and if they are handled with reasonable economy and facility they must be handled in the portion of the stream between the mouth of the Little Fork and the mouth of the Black River?—A. Yes, sir.

Mr. TAWNEY. In miles, how long is this boom? It was not stated by Mr. Giles, I think, and I would like to have it appear in the record.

Mr. ROCKWOOD. May I suggest, Mr. Chairman, that Mr. Giles be asked to scale the map and state that as accurately as he can? The river is winding.

Mr. BACKUS. I should guess it is 9 or 10 miles. But he can scale it.

Mr. ROCKWOOD. Mr. Giles, will you scale the map and tell us the length in miles? As you go along, you might state the length of the different sections from the mouth of the Little Fork.

(Mr. Giles scaled the map.)

Mr. GILES. From the mouth of the Little Fork River to the mouth of Big Fork River is 7.1 miles, and from the mouth of the Big Fork River to the end of the boom at the mouth of the Black River is 3.7 miles, making the total length of the boom 10.8 miles.

Examination of Mr. Backus resumed by Mr. TAWNEY:

Q. Mr. Backus, if it were not for the maintenance of the boom in this part of the river the logs that come out of the Little Fork, Big Fork and Black Rivers would all float downstream loose, would they not?—A. Yes, sir.

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Q. And at certain seasons of the year, in the event of freshets in these tributary rivers, the loose logs in the river would be a very material obstruction or hindrance to navigation, would they not?—A. Yes.

Q. That is, when there are 125,000,000 feet of logs coming down in a season, I simply wanted to know whether or not it would be any hindrance to navigation.—A. Well, it would give us a little anxiety and care on account of boats.

Q. Well, to that extent the maintenance of the boom is an aid to navigation, is it?—A. Yes; it is.

By Mr. CASGRAIN:

Q. How long have the mills that you have spoken of been established here?—A. The paper mills began operating in the summer of 1910, but in a small way. They operated at full capacity during the entire year of 1911 and 1912. The sawmill at this point began its operations in August, 1911, and has been operating practically continuously since that time.

Q. Before 1910 were there considerable lumber operations on this river?—A. Below this point. The mills were then all largely below this point.

Q. Where were they, and how many?—A. In addition to the numerous little mills along the river, such as we saw yesterday, that cut 100,000 or sometimes 500,000, the operations have been almost entirely confined to Rainy River—Spooner, Beaudette, and the mills across the Lake of the Woods—Kenora and Kewatin. Those mills have been operating for a great many years.

Q. Since 1910 the lumbering operations in this part of the country, and especially on the tributaries of the Rainy River, have increased extraordinarily, have they not?—A. Very much, indeed.

Q. Before 1910 there was nothing like the amount of logs cut that there is now?—A. No, sir.

Q. Therefore the hindrance to navigation by floating logs, before 1910, would not be as great as it would be now were it not for this boom?—A. No; nothing like it.

By Mr. TAWNEY:

Q. Prior to 1910 they had, and even now have, a boom at Rainy River where they either brail or raft logs for transportation across the Lake of the Woods?—A. Yes; and for sorting for the mills at Spooner and Beaudette.

Q. But there was no boom between International Falls and Rainy River prior to the construction of this boom?—A. No, sir; that is, not up the river from the present boom, which is just above the town of Rainy River and Spooner and Beaudette.

Q. And this boom accommodates logs owned by Canadian lumber companies as well as logs owned by American lumber companies, does it not?—A. Yes, sir.

Mr. CASGRAIN. The dredging indicated upon this map is a part of the plan which you submitted to the commission?

Mr. BACKUS. Yes, sir.

Mr. CASGRAIN. This dredging is to be done by your company?

Mr. BACKUS. We are afraid it may be necessary for the company to do it.

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Mr. TAWNEY. Mr. Rockwood, I understand that the matter of putting in evidence the facts in regard to the dredging will be deferred until that map is returned this afternoon?

Mr. ROCKWOOD. On that point I don't know as there is any further evidence. With respect to the dredging, that is to be done if required. There are some negotiations between Mr. Backus and the department of public works now as to the time; but that is simply to be done if required or insisted upon.

Mr. TAWNEY. I wanted to have the record show the extent of the dredging, and whether authority had been given for dredging on that side of the river the same as it has been on this side; and the width of the channel. That is a material part of this plan.

Mr. CASGRAIN. If any of you gentlemen wish to ask questions, it is your privilege to do so.

Mr. TAWNEY. Mr. Chapleau, if there are any questions that you desire to ask—or Mr. Graham or Mr. Horne—it will be your privilege to do so.

Mr. CHAPLEAU. Mr. Giles, does this map show thereon the new position of the pile clusters, such as we defined in our plan that was sent to your company?

Mr. GILES. Yes, sir; and it shows the absolute position of the boom piles clear up the river as they are driven now.

Mr. CASGRAIN. I suppose that will appear when we get this map which has been mislaid?

Mr. GILES. Yes, sir.

Mr. ROCKWOOD. That is true, Mr. Chairman.

Mr. GILES. This portion [indicating on Exhibit A] is a direct copy of it.

Mr. ROCKWOOD. Mr. Giles, this map has been referred to—perhaps not this morning, but it certainly has been in our conversations—as an "amended plan." I want to ask you whether it is not a fact that the boom has been constructed in accordance with the map that was prepared by the United States engineers and approved by the Secretary of War, just as closely as the physical circumstances would permit when the actual survey and soundings were made?

Mr. GILES. It corresponds as closely as you can get it that way.

Mr. ROCKWOOD. That map was on a very small scale?

Mr. GILES. Yes; there is hardly a comparison between the two. It was on such a small scale that you couldn't determine within 50 feet of where the piling would go.

Mr. ROCKWOOD. As a matter of fact, the boom has been constructed in an actual and good-faith attempt to comply with that permit exactly?

Mr. GILES. With that map, yes, sir; to comply with that absolutely.

Mr. CHAPLEAU. Is this blue print the same as the blue print that was sent down to the department of public works for approval?

Mr. GILES. It was sent to Mr. Rockwood; I suppose he sent it there.

Mr. ROCKWOOD. I stated a moment ago that this blue print, Exhibit A, has not been filed anywhere excepting that it was sent to the commission, as the commission required, at Washington, two copies, with the expectation that one would be sent to the secretary

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at Ottawa. We will be very glad to furnish the department with a copy.

Mr. CHAPLEAU. The reason I asked was that the first plans were refused because they were not complete, and I understood that this one had been sent in to replace the first one.

Mr. ROCKWOOD. Well, we will do that. It has not actually been sent in.

Mr. BACKUS. Mr. Rockwood, I think Mr. Chapleau is of opinion that an application has been sent direct to Ottawa.

Mr. ROCKWOOD. No; there has not. That matter arose in this way: The company began the construction at Watrous Island, extending up to the Big Fork River, attempting to keep on the Minnesota side and attempting to keep out of the jurisdiction of Canada and to give no ground for complaint. But complaint was made to the engineering department under the Secretary of War and complaint was made also to the department of public works. The department of public works took the matter up of itself and notified the company that these complaints were made, and sent engineers to make examinations. Well, in the first place they sent a map with an order that a long stretch of piles be taken out—I can't tell now exactly what they were—and we asked for a modification of that order, and it was modified and a new map submitted and that we complied with.

Mr. CASGRAIN. Whom did that come from?

Mr. ROCKWOOD. The department of public works. Mr. Chapleau can tell from what particular officer it came. And that new map required the dredging of this new channel across the bar.

Mr. CASGRAIN. You can easily furnish a blue print to Mr. Chapleau, can you not?

Mr. GILES. Surely. We can do it at the office and it can be done this noon.

Mr. CHAPLEAU. The Watrous Island Boom Co. made application to our department, and I presume they will furnish the department with the amended plan that we have asked for; that is, the more complete plan. I wanted to establish that this is the same one that will be sent in with the application, that is all.

Mr. GILES. It is.

Mr. BACKUS. I think Mr. Rockwood should state to the commission that the plan of dredging this bar was with the expectation and the suggestion that when that was done this boom should be moved out here [indicating].

Mr. ROCKWOOD. Yes; that was understood. But I don't remember whether it was referred to in the order or not.

Mr. GILES. This map from the east point of Watrous Island to a point about 200 or 300 feet above the Laurel Dock is a direct copy of the map furnished by the department of public works, except that it does not show the piling that they requested us to remove and which we did remove.

Mr. CASGRAIN. Mr. Rockwood, didn't Mr. Thompson appear on behalf of the Dominion Government in this matter of the Watrous Island Boom application, and file some kind of an answer to the application?

Mr. ROCKWOOD. I don't think I have ever been notified of it.

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CHARLES L. POTTER, having been duly sworn, testified as follows:

Examined by Mr. TAWNEY.

Q. Col. Potter, you are a member of the Engineer Corps of the United States Army?—A. Yes, sir.

Q. And in charge of what is called the St. Paul district?—A. I am.

Q. Which includes the waters of the Rainy Lake and Rainy River and the Lake of the Woods in the United States?—A. Yes, sir.

Q. You accompanied us on yesterday down the river, and saw this boom?—A. I did.

Q. I want to ask you whether in your opinion certain clusters of piles at these three points that have been referred to could be moved farther toward the Minnesota shore without seriously interfering with the transportation of logs in the boom, and whether such changes in these clusters of piles is necessary in the interest of navigation at these points that I have indicated on the map?—A. At the upper one I should say that they are not necessary in the interests of navigation.

Q. That is, at lot 2, section 30?—A. Yes, sir. The river is narrow; it is a straight reach, and there is no difficulty in navigating through it. The only question, as I understand it, is the possibility of having to turn in it. You could not operate the boom and give them room to turn in there, therefore the 10, 15, or 20 feet that would be taken away from the boom company would be of no advantage to navigation and might hamper the boom company a little; that would be my opinion, at that point.

Mr. CASGRAIN. Would that mean that there is no way of allowing these people to turn their boats there at all; that they would not be able to stop if it was necessary to turn at that point?

The WITNESS. They would have to go below and turn around and run up if they happened to want to make a landing at that one particular point. At that particular point the boom company couldn't operate and give the steamers a chance to turn; they would have to go below anyhow; and the little additional width that you could give them without seriously hampering the boom company would not help them enough to pay to have it done, in my opinion.

Q. How far down would they have to go in order to turn?—A. Probably down to here [indicating on Exhibit A].

Q. That would be a distance of about a mile and a half?—A. Oh, no.

Mr. GILES. A distance of about half a mile.

The WITNESS. A Mississippi steamer often goes that far in making a turn, drifting down.

Q. Now, the next point is the bend of the river to the north, opposite lot 2.—A. I think that is a bad bend for the steamers and a bad bend for the lumber interests. But in my opinion the lumber interests could get along by redriving those clusters of piles—those two that are out—50 feet nearer the south shore, and it would be a help to the navigation people in making that bad bend against an upriver wind as we had yesterday.

Q. Now, the other point; at the head of Watrous Island.—A. In my opinion a change could be made there without injuring the boom company at all; because they have an outlet from their boom into

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the river, which is a flaring outlet, for which there is no reason, and they have got the same width down here that they have at the outlet. They could take the logs out just as easily, and a very small change there would give the steamboats the whole of that 11-foot channel. By moving the last pier in about 50 feet would make a width of opening practically the same to them, and would give the navigation interests all of the 11-foot channel.

SAMUEL J. CHAPLEAU, having been duly sworn, testified as follows:

By Mr. TAWNEY:

Q. Mr. Chapleau, what is your position in connection with the department of public works of Canada?—A. I am principal assistant engineer in the department of public works of Canada.

Q. How long have you been in that position?—A. About 12 years.

Q. Has the department of public works jurisdiction of the navigable waters on the Canadian side, in the Rainy River, Rainy Lake, and Lake of the Woods district?—A. Yes, sir.

Q. Are you familiar with the Rainy River?—A. Yes; I have been down as far as the Long Sault.

Q. Will you look at Exhibit A, opposite lots 1 and 2 of section 30, which indicates where the clusters of piles are driven and gives also the width of the steamboat channel and the width of the log channel, and state whether in your judgment any change could be made in the clusters of piles opposite these two lots that would not seriously interfere with the transportation of logs through the boom, or is it necessary in the interest of navigation?—A. I do not think it is necessary in the interest of navigation at that particular stretch, for the reason that if the clusters were moved over it would not be of any aid to boats passing through there. They have plenty of width there and plenty of water.

Mr. CASGRAIN. Yes, but if they had to turn around, then they wouldn't have plenty of room, would they?

Mr. CHAPLEAU. It is within such a short distance that they could either go above or drop below and turn.

Q. In other words, they could not maintain a boom at all if you gave room enough for boats to turn at this particular point?—A. No; it would be too congested.

Q. Now, the next point, which is the bend to the north, opposite lots 1 and 2, indicated on Exhibit A. What change do you think could be made there in the present location of those piers or clusters of piles, that would be of benefit to navigation, without seriously interfering with the transportation of logs through the boom?—A. Am I to understand that these are now driven [indicating], or are those two out?

Mr. ROCKWOOD. The ice took them out.

Q. The ice took them out, and those are to be driven.—A. It seems to me that that is a very narrow turn there, and pretty hard to negotiate either going up or coming down the river. At the same time, it is very hard to get logs around a place like that. I should imagine they would be required to keep a force of men there during the driving, and as they would be required to have men there I should say it would be much to the advantage of navigation to give them all

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the width they can get, although it might require to have men there at certain times of the drive.

Q. Col. Potter stated that if these two piles immediately opposite lot 2, section 25, were driven 50 feet farther in than indicated on this map, that it would be practically all that the interests of navigation would require, and that it would not seriously interfere with the operation of the boom. Do you acquiesce in that opinion?—A. Yes, sir.

Q. Did you hear the testimony of Col. Potter as to the third point that has been referred to?—A. Yes, sir.

Q. What is your opinion as to the desirability of changing the location of any of those piers, in the interest of navigation? What would be the effect on the transportation of logs in the boom?—A. I agree with Col. Potter that from this cluster here—there are three cribs and two pile clusters—it would be of much advantage to navigation interests and would not hurt the log driving any if they were moved farther toward the Minnesota shore. They could be moved about 80 to 100 feet—that is, the outside one.

Col. POTTER. I had not seen the map when I testified. I would say that that outer pier might be put in 75 feet with advantage to navigation and not hurt the log driving.

Mr. TAWNEY. Have any of you gentlemen any questions that you desire to ask Col. Potter or Mr. Chapleau?

Mr. GRAHAM. No. The points I was going to speak about you have covered with these gentlemen's testimony. I would like to know if you wish Capt. Black or any of us to give any further evidence.

Mr. TAWNEY. You have the opportunity, if you desire, to present testimony.

Mr. CASGRAIN. We would like you to feel that you are at perfect liberty to present any objection you may have to the approval of this plan. If you have any such objections, or if you have anybody here to urge them, we would like to hear from you.

Mr. GRAHAM. I would like to call on Mr. Horne.

Mr. HORNE. I would rather Capt. Black would take the chair, if there is any evidence necessary. I would like the privilege of summing up for about three minutes when you get through.

Mr. TAWNEY. Very well. Capt. Black may be sworn.

JACOB BLACK, having been duly sworn, testified as follows:

Mr. TAWNEY. Capt. Black, you are a steamboat captain?

The WITNESS. Yes, sir.

Mr. TAWNEY. Mr. Graham or Mr. Horne, do you care to examine the witness?

Mr. GRAHAM. I would rather have the chairman do it.

Examined by Mr. TAWNEY:

Q. How long have you navigated the Rainy River?—A. Eleven steamboat seasons.

Q. You were with us yesterday on the trip down the river. Has there been any change in the location of the clusters of boom piles since you were before the commission last September at International Falls?—A. Yes; there have been several changes made that I noticed yesterday.

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Q. Attention has been called this morning to three places in the river where it was suggested on yesterday that there might be further changes made that would be in the interest of navigation. I want to ask you whether the points referred to in the testimony of others opposite lots 1 and 2, section 30, is one of the places where you suggested that further changes should be made.—A. Yes; that is one of the places; for the reason that if a stop had to be made there, between the boom and the shore there is so little water to turn around in. The water is good enough, but there is no space.

Q. In other words, there is plenty of depth of water, but you haven't the width?—A. Yes. And there are millions of feet of logs that come down here every year. Before the boom was placed here, they had the full width of the river to run in, while now they are shut into less than half the river and I must run in there among the logs as well, and when the boom crowds them in to the shore, with the boat to run in the narrow places, it makes it difficult, because there are millions of feet of logs continually running down the river all year.

Mr. CASGRAIN. In answer to the first objection, they say you can turn either higher or lower down.

The WITNESS. Yes, by running perhaps half or three-quarters of a mile and back again; that would make about a mile and a half run.

Mr. CASGRAIN. But it is possible?

The WITNESS. Yes, it is possible.

Mr. CASGRAIN. Now, about the logs. Do the logs come between the channel and the Canadian shore?

The WITNESS. Yes.

Mr. CASGRAIN. Do the logs come down single, or in bunches?

The WITNESS. Sometimes only singly, something like in the river yesterday; other days they are so thick that it is almost impossible to get through.

Mr. CASGRAIN. Where do the logs come from?

The WITNESS. From up river here. They sluice through the dam and run loose.

Q. But none of the logs that come out of the Little Fork go in there?—A. No.

Q. The logs that you now refer to are logs that come from Rainy Lake?—A. Yes, sir.

Q. How many mills are there on Rainy River or Lake of the Woods that get their logs above International Falls?—A. There is the Spooner, the Rainy River mill, and the Engler Lumber Co., at Rainy River; and then there are the mills across the lake. But I don't believe the Rainy River mill is in operation this summer, is it?

Mr. BACKUS. The only logs going over the dam, that I know of, this year, are the Rat Portage.

The WITNESS. I am speaking from other years' experience.

Mr. TAWNEY. The only logs going over the dam this year, you say, are for the Rat Portage Lumber Co.?

Mr. BACKUS. Those are the only ones that I know of.

Mr. CASGRAIN. For what distance or length of the river would this log situation that you have spoken of exist?

The WITNESS. Anywhere where the boom crowds in to the shore.

Mr. CASGRAIN. Not so much at the Little Fork River as on the bend lower down the river?

The WITNESS. No.

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Mr. TAWNEY. Opposite lot 2.

The WITNESS. Yes. They have half of the river where they are running their logs through. At the same time, all kinds of logs must run through this here [indicating]. That is a boom, the same as theirs is. Although their logs don't go through it, it is a boom and logs are running through there all the time. And when the boom here crowds the logs onto the shore in a narrow place where they haven't the full width of the river, they are bunched.

Mr. CASGRAIN. The answer to that is that it is recommended that these two clusters of piles be driven about 50 feet in toward the Minnesota shore.

The WITNESS. I think that would help out and at the same time not hurt the boom. It would help navigation at that point.

Q. The other point, Captain, that was pointed out yesterday, at the east end of Watrous Island, that was referred to by Col. Potter—— A. Well, his suggestion was all right, too. By shoving that over and giving us all the deep water that there is there, I think that would be all right.

Q. That would remove practically all of the objections, then, on the part of the navigation interests?—A. Yes; we couldn't ask for much more, because they have behind it very shallow water and where there is no water there is no use for the boats to try to run.

By Mr. CASGRAIN:

Q. Do I understand you to say that the only objection which remains is the narrow space which is left between the Canadian shore and the boom at the first cross on the map—Exhibit A?—A. Yes; at lots 1 and 2.

Q. That is the only objection that remains now, practically?—A. Yes; and that can be overcome by the boats running either above or below before turning.

Q. What is the nature of the traffic which is done on the river here by your boats? Is it a freight or a passenger business?—A. It is freight and passenger traffic. They are all farmers that live there, and they are always trucking, trading with the boats, hauling a little freight, and getting on and going to different places to do their shopping, and shipping their produce and getting things in; and they expect you to stop at every farmhouse, and their places are 80 rods apart.

Q. What effect has the building of the Canadian Northern Railroad had upon the navigation of the river? Are there as many passengers now who travel by the boats as there were before the railroad was built?—A. Yes; that is, in the tourist line. From Emo to Fort Frances it is the only means of travel that the people have. The roads are no good, they have no roads in the spring, and they have only the boat line between those two places.

Q. Is the population dense between Emo and Fort Frances?—A. Yes, it is all settled up.

Q. What is the distance?—A. Thirty-two miles by the river.

Q. And these people really have no access to the railway, or practically none?—A. Practically none.

Q. There is no station between Emo and Fort Frances?—A. Yes, there are three, situated about 7½ miles north of the river.

Q. How many boats does the Rainy River Navigation Co. own which ply on the river?—A. I couldn't say. It is two that they have

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put on this run—the *Kenora* and the *Agwinde*. The *Kenora* is a keel boat, twin screw, steel. The *Agwinde* is a flat-bottom, stern-wheel boat.

Mr. HORNE. You suggested that these three points were the only ones. You are not forgetting the Laurel dock business—the new channel?

Mr. TAWNEY. The dredging?

Mr. HORNE. Yes.

Mr. TAWNEY. No. I want to ask some questions about that. The only reason I omitted to do so was because the map that was used yesterday, and which indicates the location of the dredging, was left at the camp last evening. It will be here this afternoon.

Mr. HORNE. Capt. Black, do you consider that the crossing at Hannaford is a very dangerous piece of work from a navigation point of view?

Capt. BLACK. Not if you have deep water. We have navigated that water always, before the boom was in, and I am satisfied we can navigate it again if we have the water.

Mr. HORNE. Did you ever hear of an accident happening there?

Capt. BLACK. No, not that I know of. I have never had any.

By Mr. ROCKWOOD.

Q. Have these boats—the *Kenora* and the *Agwinde*—been making the run from Kenora to Fort Frances regularly?—A. Do you mean continually since they were built?

Q. Say the last 10 or 12 years?—A. I can't remember off-hand. I think Mr. Graham could answer that question better than I could. I can find out.

Q. Haven't you been employed by this company during the 11 years that you speak of?—A. Not steadily. I have been with this company eight seasons, I think.

Q. The past eight seasons?—A. Yes. I first started out with Capt. Lewis, before that.

Q. How many of those seasons has the *Kenora* run to Fort Frances?—A. I can't say. I never sailed with the *Kenora*.

Q. If you were on the river on either boat, you would know if the *Kenora* was running, wouldn't you?—A. I couldn't say off-hand, and there is no use making a guess on it. I am not posted to-day so as to say for certain. She has run in here.

Q. Made regular trips?—A. Yes.

Q. During that time?—A. Yes, she has made regular trips.

Q. How many seasons in all, do you remember?—A. I couldn't say off-hand.

Q. More than one or two?—A. If I remember, when she first came out she used to run here all the time; because I was on the opposite boat for two years and she was making regular trips right in here.

Q. That was back in 1899, 1900, and 1901, wasn't it?—A. Up to 1900 I was on the opposite boat, and then I went onto the other boat. I was on the *Kewatin* awhile.

Q. Since 1900, how many seasons can you recall in which the *Kenora* made regular trips to Fort Frances?—A. I can't remember. I can't say definitely.

Q. I would be glad to have that information given.—A. Mr. Graham, I am sure, can give that.

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Mr. BACKUS. I would like to make a statement, and I would like to have Col. Potter hear what I have to say, in regard to this lower point that was brought out here.

Mr. CASGRAIN. You are speaking of the lower end of the boom, near Watrous Island?

Mr. BACKUS. Just above the east end of Watrous Island, at the sorting gap. That arrangement was made—and if I remember correctly it was done largely at the suggestion of Col. Shunk at St. Paul at one of our meetings there—in order that down-river logs might be released more promptly than would have been the case if you narrowed up that boom. The plan—and his suggestion at that time—was that where a large amount of logs were in the boom, coming out of the Big Fork, and the lower mills were needing those logs, that we should put in a double sorting gap there, to give vent for logs faster than would be the case if this boom were narrower at that point. Now, if the space here is not needed for boats—which it does not appear to be—that would always be a means of releasing the down-river logs more promptly.

Mr. CASGRAIN. Do you think 70 feet would make a great difference in that regard?

Mr. BACKUS. In getting the logs out and away it would make a big difference.

Mr. TAWNEY. Have you in the past experienced any difficulty on account of congestion there?

Mr. BACKUS. Yes; we have.

Mr. TAWNEY. Even with that width?

Mr. BACKUS. Even with that width.

Mr. TAWNEY. In releasing logs?

Mr. BACKUS. Fast enough; yes.

Mr. ROCKWOOD. Just explain the relation of the Big Fork in regard to that.

Mr. BACKUS. The amount of logs coming down the Big Fork is greater than the amount of logs coming out of the Little Fork. When the freshet pushes out a great glut of logs here, unless you can release the mouth of the river your logs are kept back in the Big Fork River, and if the water goes down you can't get them out. And the amount of space between the mouth of the Big Fork and the head of Watrous Island is limited. It was for both of those reasons that we wanted to enlarge this boom where the new channel is to be dredged, and also to keep ourselves in position to release the logs quickly.

Mr. CASGRAIN. If you employed more men there, wouldn't you be able to release the logs more quickly and remedy the effect of the narrower space?

Mr. BACKUS. Well, that is the point. There is no use of having more men unless you have room for them to work in. As it is now, we are doing all the releasing down here at this sorting works [indicating]; but should we get a glut and find it necessary to go up and release the logs at that point [indicating], then, without space to do it, we couldn't put additional men on to get rid of it. Mr. Rockwood was present, and I think he will rememeber that Col. Shunk——

Mr. ROCKWOOD. I remember very well.

Mr. BACKUS. —suggested getting the space there as wide as possible where the water is deep, so that in case of emergency we could release them.

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Mr. ROCKWOOD. That was done on the urgent insistence of the Shevlin-Mathieu people, who depended very largely on the Big Fork logs for the supply for their mill.

Mr. CASGRAIN. That now belongs to Backus.

Mr. BACKUS. Yes; but the mill has to be supplied just the same and from the same source. Now, the storage space between the mouth of the Big Fork and the foot of this boom is very limited, and when the logs come down the Big Fork on the spring freshets, as they always do, they must be got out into the river or they are tied up for the season, and perhaps tied up until the next year.

Mr. CASGRAIN. Do you say now, Mr. Backus, that if 70 feet were taken off the boom space at that point it would make operations impracticable?

Mr. BACKUS. It would certainly curtail the operations.

Mr. CASGRAIN. Would you say that it would curtail the operations seriously? Would it be a serious matter?

Mr. BACKUS. In the ordinary times, no; but in the case of an emergency, yes.

Mr. CASGRAIN. What I am trying to do—and I am sure the chairman is, too—is to come to some agreement between you and the navigation end.

Mr. ROCKWOOD. We appreciate that, and we want to cooperate. It is exactly the right thing to do.

Mr. BACKUS. For the reasons I have given, if you are going to narrow up that space there, I would strongly urge you not to go beyond Col. Potter's first suggestion—50 feet.

Mr. TAWNEY. Col. Potter, you succeeded Col. Shunk, did you?

Col. POTTER. Yes, sir.

Mr. TAWNEY. Have you taken into consideration the necessity for releasing logs at the point mentioned a little while ago, where the boom could be narrowed and the steamboat channel widened?

Col. POTTER. Yes, I have taken that into consideration. My suggestion does not narrow that gap anything like 70 feet if you move that out. That gap is flaring toward the river. If you move that outer piling 70 feet you will still practically get the full width of opening that you have now. A steamboat tries to avoid shallow water and to get into deep water, naturally; and if you can get that boom inside, on the rise of those soundings between 11 and 5 feet, steamboats will naturally work away from it rather than toward it.

Mr. ROCKWOOD. Logs run better in deep water, as well as steamboats, because the current is swifter and it carries them away. With a given width of sorting gap the capacity is very much greater if the water is deep, because it is swifter.

Mr. BACKUS. We got that out as far as we could get it out, so as to get into the current, so the logs would go right away.

Mr. HORNE. May I ask Mr. Backus a question?

Mr. TAWNEY. Certainly.

Mr. HORNE. This 8-foot channel opposite the Laurel Dock, was that your suggestion, in order to increase the capacity of your boom?

Mr. BACKUS. That was a plan arrived at in the office of Col. Shunk when the storage capacity of that boom was questioned, and I think all parties agreed that that would be a good thing to have done.

Mr. CASGRAIN. That it would be an improvement to navigation?

Mr. BACKUS. That it would be an improvement to navigation and

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give more room for handling logs. Whether it was my suggestion or somebody else's, I couldn't say.

Mr. HORNE. Do you propose to put that channel through?

Mr. BACKUS. I would like to see the Government do it, because I think it should do it. But if they require us to do it, I presume we will be obliged to.

Mr. HORNE. And maintain it?

Mr. BACKUS. I can't answer that question.

Mr. ROCKWOOD. That question has not been suggested.

Mr. HORNE. I was just suggesting it now.

Mr. TAWNEY. What is the character of the soil at the bottom of the river?

Mr. HORNE. I think it is sand. I am fairly sure it is.

Mr. ROCKWOOD. At that point?

Mr. HORNE. At that point, yes.

Mr. ROCKWOOD. But generally speaking it is not a sandy bottom, is it?

Mr. HORNE. No.

Mr. ROCKWOOD. But from the fact that that bar has formed you assume that it is something that shifts?

Mr. HORNE. I assume it because Capt. Black told me so, that is all. I asked him yesterday what the bottom was—just casually, I didn't think about this at all—and he said it was sand. So I am assuming it is sand.

(At this point a recess was taken, the hearing to be resumed at the same place at 4 p. m. May 6, 1913, at which time and place the following proceedings were had.)

FRED SMITH, having been duly sworn, testified as follows:

By Mr. ROCKWOOD:

Q. Where do you live, Mr. Smith?—A. At Laurel.

Q. What is your business?—A. I run a store down there, and lumber a little. I am engaged in different lines of business in a small way.

Q. By "lumber" do you mean logging or sawing?—A. Both. I have a little interest in the Engler Lumber Co.'s mill; that is the only interest I have in the manufacture.

Q. How long have you lived at Laurel?—A. About 20 years.

Q. You are familiar with the country about there, and also on the Canadian side?—A. Yes, sir.

Q. Have you done any boating on the river?—A. Yes, I misfortunately engaged in steamboating there for a few years, and later on gasolined a little, too.

Q. Did you operate the boat yourself?—A. No, I owned stock in it only.

Q. What boat was it?—A. The *Itasca*.

Q. Were you one of the officers?—A. Yes.

Q. Did you travel on the boat on the river?—A. Oh, yes.

Q. Between what points?—A. Between Laurel and International Falls, and below there occasionally; the whole river, in fact.

Q. Are you familiar with the boom as it is now built?—A. Yes, I am.

Q. Have you operated boats at all since the building of the boom began?—A. No, I haven't. We quit before that.

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Q. Will you tell the commissioners whether in your judgment there is any difficulty or inconvenience in operating such boats as ply that river, with the boom as it is?—A. I wouldn't consider there was any difficulty; no.

Q. Is the Canadian side supplied with roads that let those settlers out?—A. Yes, very good roads.

Q. Where do they lead to?—A. They have what they call the River Road, the main road, running parallel with the river; and then at various stations along the Canadian Northern they have roads running directly north and south to tap the River Road, to the stations on the railroad.

Q. How far does the road run parallel with the river?—A. The whole length of the river.

Q. From Fort Frances to the mouth of the river?—A. Yes.

Q. That is a good road, you say?—A. Down near Rainy River, I understand, there is some that isn't the best, but from here——

Mr. CASGRAIN. Are you speaking of a wagon road that runs parallel with the river?

The WITNESS. Yes.

Mr. CASGRAIN. The whole way?

The WITNESS. Yes. But from here to Emo and down that way the roads are very good. They run automobiles over them from Fort Frances.

Q. Why did you give up steamboating on the river?—A. We gave it up for the same reason the Rainy River Navigation Co. did—that there was no money in it. It finally got so after the railroad ran in there. Of course the railroads always get the business, anyway, because they give quicker service and in fact cheaper service. After the railroad paralleled the river, there was nothing left for a boat. We ran three or four years after the railroad was built, and our stockholders every fall had to pass the hat—in one way of speaking—to make up the loss. We finally got tired of it and quit.

Q. Last year was there any steamboat that made regular trips on the river?—A. No. There hasn't been any steamboating—very little steamboating, for the last four years. Three years ago we ran the *Itasca* part of the summer, during July and August.

Q. Do you remember when the *Kenora* last made regular trips?—A. I haven't seen the *Kenora* for so long that I almost forget how she looks; but I think she was up there—oh, it must be six years, possibly more; I think it is more than six years.

Q. Had she been running regularly down to that time?—A. Yes.

Q. Or only parts of the seasons?—A. There would be parts of the seasons, in low water, that it couldn't run.

Mr. CASGRAIN. Mr. Graham, have you any questions to put to Mr. Smith?

Mr. GRAHAM. No.

EDWARD W. BACKUS, recalled, testified as follows:

By Mr. ROCKWOOD.

Q. About what portion of the boom is now filled with logs between the Little Fork and Big Fork?—A. I should make a guess at two thirds.

Q. You saw it yesterday when we went down?—A. Yes, sir.

Q. It would be approximately two-thirds?—A. I should say approximately two-thirds.

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Q. That is your judgment rather than your guess, in the strict sense of the word?—A. Yes, sir.

Q. As nearly as you can estimate, will you state whether there will be logs yet to come down the Little Fork to fill the boom this year—to fill that portion that is not already filled?—A. Above the Big Fork?

Q. Yes.—A. Yes, and more, I should say.

Q. Is the same true of that portion below the Big Fork? I don't know but that is full now; I have forgotten.—A. Yes, that is going to be filled, I should say, ten times, with what logs are back; that is to say, there are ten times as many logs as can get into that portion of the boom.

Q. Yes, but in the operation, as they come in and out, will the boom be filled and crowded or not?—A. Oh, yes. Below the mouth of the Big Fork the space is not sufficient to take care of the logs as would be proper if more space could be had.

Q. Then, the need for space there is urgent?—A. Yes, sir.

Mr. TAWNEY. Is any part of this boom located beyond the center of the river or beyond the center of the channel of the river?

Mr. BACKUS. I think not, unless, possibly, just above the Laurel Dock.

Mr. TAWNEY. What point in the river is that? Indicate it on the map.

Mr. BACKUS. I should say about a mile above the mouth of the Big Fork.

Mr. ROCKWOOD. You suggested that possibly just above the Laurel Dock the boom might be across the center of the deep channel?

Mr. BACKUS. I said it might be.

Mr. ROCKWOOD. It is a fact, is it not, that that is the point where the deepest water is so close to the Minnesota shore that——

Mr. BACKUS. There is hardly room, as the boom is now constructed there, to permit the logs to pass down from the river.

Mr. TAWNEY. At this point, on the west side of lot 4, where the boom comes very close to the Minnesota shore, is the boom beyond the center of the channel?

Mr. BACKUS. No, sir.

Mr. TAWNEY. That is the only point in the river, you say, that the boom approaches the center of the channel?

Mr. BACKUS. I think so, yes, sir; in my best judgment.

Mr. TAWNEY. Is there any place as indicated on this map, or as the boom is now constructed, where it is beyond the middle of the river, regardless of the channel?

Mr. BACKUS. I believe not.

Mr. TAWNEY. Now, the dredging which the Canadian Government has authorized you to do—do you know the length of that part of the river that is to be dredged?

Mr. BACKUS. My recollection is about 1,200 feet.

Mr. TAWNEY. 2,800, is it not?

Mr. ROCKWOOD. Yes; a little over half a mile.

Mr. BACKUS. Just where do you mean?

Mr. TAWNEY. The whole of that [indicating].

Mr. BACKUS. About 2,800 feet; yes.

Mr. TAWNEY. It is correctly indicated on this map, is it?

Mr. BACKUS. Yes, sir.

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Mr. TAWNEY. I think the engineer said, yesterday, 2,800 feet.

Mr. ROCKWOOD. Approximately that.

Mr. TAWNEY. And the part of the river to be dredged is wholly on the Canadian side?

Mr. BACKUS. It is.

Mr. TAWNEY. That is, it is wholly on the north side of the center of the river, and on the north side of the center of the present channel?

Mr. BACKUS. Yes, sir.

Mr. CASGRAIN. Do I understand that you have been authorized by the Canadian Government to dredge?

Mr. BACKUS. I think that is true.

Mr. ROCKWOOD. That is true.

Mr. TAWNEY. Do you know whether the maintenance of this boom when it is filled with logs at any particular given point will affect the level or flow of the water on the other side of the boom?

Mr. BACKUS. I don't see how it could affect the level of the river. I think if the logs were lying loosely in the boom the level of the river on the opposite side would not be affected. But if the logs in the boom were jammed I think that naturally the water would have to take the course outside of the boom, and it naturally would raise the level on the opposite side of the river.

Mr. TAWNEY. It sometimes happens that the logs are jammed in the boom?

Mr. BACKUS. It sometimes happens so, when they go in on a strong current.

Mr. TAWNEY. And is it or is it not a fact that the dredging down there on the Canadian side will affect the level of the water there?

Mr. BACKUS. Where this proposed canal is?

Mr. TAWNEY. Yes.

Mr. BACKUS. Yes, sir; it would increase the depth of the water in the canal, surely.

Mr. TAWNEY. Mr. Giles, have you got that map yet?

Mr. GILES. No; it hasn't come yet.

Mr. TAWNEY. Suppose that by agreement we allow them to furnish the map?

Mr. CASGRAIN. That is all right. You have located it, have you not?

Mr. GILES. Yes. It is coming in on the train.

Mr. TAWNEY. By agreement we will receive the other map in evidence, for the purpose of showing what clusters of piles the Canadian Government ordered to be removed, and also to show that the work has been done as requested and ordered by the Canadian Government.

(The map was subsequently marked Exhibit B.)

Mr. TAWNEY. Have any of you gentlemen anything further to offer? If there is nothing further the hearing is closed.

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REPORT OF THE SPECIAL COMMITTEE IN THE MATTER OF THE APPLICATION OF WATROUS ISLAND BOOM COMPANY FOR APPROVAL OF PLANS FOR BOOM IN RAINY RIVER.

On the 2d day of April, 1913, the following order was made:

Ordered, That questions growing out of the application of the Watrous Island Boom Co. for approval of its plans for the construction of a boom in the Rainy River be referred to two members of the commission to investigate, and, if in their opinion desirable, to take such testimony as they may consider necessary to be laid before the commission for its final determination of the question whether such application should be approved in whole or in part; and to fully report the facts, together with such evidence as may be taken to the commission as soon as may be; and that the further consideration of the application be continued to a date to be fixed by the chairmen.

Ordered, That Mr. Tawney and Mr. Casgrain be appointed to act under the foregoing order.

In pursuance of the above-recited order the undersigned met at International Falls, Minn., and on the 5th of May proceeded to carry out the instructions of the commission. The application is in the following terms:

To the Honorable, the International Joint Commission, Washington, D. C., and Ottawa, Canada, the Secretary of State, and the Secretary of War of the United States, Washington, D. C.

GENTLEMEN: The undersigned, Watrous Island Boom Co., a corporation organized under the laws of the State of Minnesota for the purpose of improving Rainy River on the northern boundary of the State, and its tributaries, including, among others Winter Road, Beaudette, Rapids, Black, Big Fork, Little Fork, Ash, Vermillion, and Namakan Rivers, and their tributaries, and the driving of logs therein, or in any portion thereof, and the improvement of such streams and tributaries by clearing and straightening the channels thereof, closing sloughs, directing sluiceways, booms of all kinds, side rolling, sluicing and flooding dams, or otherwise, and keeping such works in repair and operating the same so as to render driving logs in such streams and tributaries reasonably practicable and certain and charging and collecting reasonable and uniform tolls upon all logs, lumber, and timber driven, sluiced, or floated on the said streams or any thereof; also taking possession of all logs put in such streams, and upon such rollways, and breaking the rollways and driving the logs, lumber, and timber; and also driving any and all logs and timber at the request of the owner or owners, which may be put into said streams or any thereof, and taking charge of same and driving the same down and out of such streams or down so far as the improvements of the company may extend; and charging and collecting therefor of the owner, or party controlling said logs or timber reasonable charges and expenses for such services; also buying, selling, and using all property, real and personal, necessary or convenient for its purposes, herewith submits plans for booms in Rainy River between the mouth of Little Fork River and the mouth of Black River, for storing, handling, sorting, and loading logs and forest products, and respectfully requests approval of such plans.

Appended to this application and printed herewith are:

1. A copy of the articles of incorporation of Watrous Island Boom Co.

2. The necessary duplicates and copies of this application required by the rules of the International Joint Commission and the Department of War, as well as the plans of the boom and surveys and soundings of the adjacent waters.

Respectfully submitted.

WATROUS ISLAND BOOM CO.,
By EDWARD WELLINGTON BACKUS,
President.

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This application was filed in Washington and in Ottawa in April, 1912.

On or about the 13th of November, 1912, Mr. John Thompson, acting for the attorney general for the Dominion of Canada filed a reply or statement in response to the application as follows:

To the Honorable the International Joint Commission, Ottawa, Canada, and Washington, D. C.

GENTLEMEN: The Government of the Dominion of Canada in response to the above application submits the following:

1. The plans submitted by the applicants do not show the true location of the piles and the proposed boom. The true location is shown on the plan prepared by the public works department of Canada, which is filed herewith. It shows that the proposed boom crosses and recrosses the Rainy River.

2. The international boundary line in the Rainy River has not been fixed, and until this has been done it can not be ascertained to which jurisdiction the applicants are subject.

3. On the plan prepared by the department of public works it is shown that pile driving has already been done and that the piles are not in the position shown on the plans submitted by the applicants. For example, at Laurel, a small wharf 3,000 feet east of Big Fork River, the applicants' plan shows the piles running to the wharf, but on the plan of the department of public works the boom is 300 feet from the wharf.

4. From the meager soundings shown on the various plans of the river it is impossible to say where the boom should be placed in the interest both of navigation and of the applicants.

5. Steamers using the north side of the river are obliged to make frequent stops to land and take off passengers by running the bow of the vessels on the shore, and this must be done with the bow upstream. In many places the boom is so close to the north shore that a vessel going downstream has not room to turn in order to make a landing. This is shown on the plan of the department of public works.

6. At the present time steamers can not use the river exclusively on the north side of the piles, and the Canadian Government submits that judgment should be withheld until a survey of the river has been made to determine whether or not steamers can use the north half of the river.

7. The plan filed by the applicants shows that an 8-foot channel is to be dredged below Big Fork River. This will alter the natural level and flow of the water, and the extent to which the natural flow will be affected should be first determined.

(8) There should be some rule as to what procedure is to be adopted to have the river cleared sufficiently for safe navigation.

(9) It should be possible to allow the applicants privileges in the river so as not to unduly interfere with navigation.

Dated at Ottawa, the 13th day of November, 1912.

The approval of the United States Government, dated 3d April, 1912, of the plans submitted by the company is in the following terms:

Whereas by section 10 of an act of Congress, approved March 3, 1899, entitled "An act making appropriations for the construction, repair, and preservation of certain public works on rivers and harbors and for other purposes," it is provided that it shall not be lawful to build or commence the building of any wharf, pier, dolphin, boom, weir, breakwater, bulkhead, jetty, or other structures in any port, roadstead, haven, harbor, canal, navigable river, or other water of the United States, outside established harbor lines, or where no harbor lines have been established, except on plans recommended by the Chief of Engineers and authorized by the Secretary of War; and it shall not be lawful to excavate or fill, or in any manner to alter or modify the course, location, condition, or capacity of, any port, roadstead, haven, harbor, canal, lake, harbor of refuge, or inclosure within the limits of any breakwater, or of the channel of any navigable water of the United States, unless the work has been recommended by the Chief of Engineers, and authorized by the Secretary of War prior to beginning the same; and

Whereas the Watrous Island Boom Co., a corporation organized under the laws of the State of Minnesota, has applied to the Secretary of War for the approval of plans, hereto attached, for booms in Rainy River, between the mouth of Little Fork River and the mouth of the Black River, in the State of Minnesota, for storing, handling, sorting, and loading logs and forest products, which plans have been recommended by the Chief of Engineers;

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Now, therefore, this is to certify that the Secretary of War hereby gives permission to the said Watrous Island Boom Co. to construct booms and to dredge in the said Rainy River, as shown upon said plans, so far as the said booms and dredging affect navigable waters of the United States, subject to approval by the International Joint Commission and of such conditions not concerning the interests of navigation which the said commission may prescribe, and subject to further conditions as follows:

1. That the work herein permitted to be done shall be subject to the supervision and approval of the engineer officer of the United States Army in charge of the locality.

2. That if at any time in the future it shall be made to appear to the Secretary of War that the structures herein authorized are unreasonable obstructions to the free navigation of said waters, said licensee will be required, upon due notice from the Secretary of War, to remove or alter the same so as to render navigation through said waters reasonably free, easy, and unobstructed.

3. That the work is to be executed as shown upon the plan hereto attached.

4. That where the navigable channel is inclosed in the boom, a channel 200 feet wide and 8 feet deep at mean low water shall be dredged outside the boom for the accommodation of boats.

5. That all work, except dredging, shall be completed before the opening of the navigation season of 1912.

6. That all dredging shall be completed before the end of the navigation season of 1912.

It is understood that this instrument simply gives permission under said act of Congress to do the work herein authorized; that it does not give any property rights, and does not authorize any injury to private property or invasion of private rights.

From the statement in response or reply, on behalf of the Dominion Government, it will be seen that no plans have yet received the approval of the department of public works. Until this approval is given, the construction, erection, or maintaining of any boom in the Rainy River, which is a navigable river, is illegal.

The act "Respecting the protection of navigable waters," being chapter 115 of the Revised Statutes of Canada, section 4, says:

No bridge, boom, dam, or aboiteau shall be constructed so as to interfere with navigation, unless the site thereof has been approved by the governor in council, nor unless such boom, dam, or aboiteau is built and maintained in accordance with plans approved by the governor in council.

Pursuant to notices which had been given to all the interested parties, the undersigned, on the morning of the 5th May, in company with the following, proceeded down the Rainy River as far as the Long Sault Rapids:

C. J. Rockwood, representing Watrous Island Boom Co.

E. W. Backus, president of the Watrous Island Boom Co., and of other interested companies.

J. T. Horne, representing the Rainy River Navigation Co. and the Western Canal Co.

Capt. J. Black, master of the steamer *Agwinde*, belonging to the Rainy River Navigation Co.

C. S. Giles, C. E., engineer in charge of the works of the Watrous Island Boom Co.

Col. Charles L. Potter, United States Corps of Engineers.

D. W. Jamieson, resident engineer of the department of public works of Canada at Fort Frances.

Samuel J. Chapleau, principal assistant engineer, department of public works of Canada, the engineer in charge of the works on the Rainy River, who was to meet the undersigned at International Falls, was on his way, but owing to unforeseen circumstances only arrived the next day.

The undersigned had with them a blue-print plan of the boom, which was afterwards filed as Exhibit "A" and which, it was stated

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to them by Mr. Rockwood, had been forwarded to the secretaries of the commission, in conformity with the order of the commission issued at Washington on April 2 last. The undersigned had also a sketch map or tracing showing the changes in the boom, which had been recommended by the department of public works.

The undersigned, accompanied by the foregoing, followed the boom down the river from the mouth of the Little Fork River to the mouth of the Black River, the progress on the river being followed step by step on the plan "A," which appeared to the undersigned to be a correct representation of the boom as constructed.

Mr. Giles gave all the information required, and Capt. Black pointed out several places where, in his opinion, navigation was obstructed by the works. The undersigned noted on the plan and on the river three places hereinafter more particularly referred to where the boom seemed to interfere with navigation. Capt. Black, however, admitted that several important changes had been made in the boom and some of the worst objections removed.

The boom extends from Little Fork River to the mouth of Black River, a distance of a little over 10 miles, and follows the American shore. In some instances it extends out to the middle of the stream and in a few places beyond the center. The boundary line has not yet been settled in that part of Rainy River, but from observation the undersigned are able to say that whether the boundary line follows the middle of the stream or the middle of the channel the boom is almost wholly constructed in American territory. At one place it will be necessary to dredge a new channel 2,800 feet in length by 50 feet in width and 8 feet in depth. This dredging, as shown on the map, forms part of the plan to be approved. The boom as constructed consists of pile clusters of 6 to 9 piles, driven at distances of approximately 120 to 250 feet apart, which clusters are connected by ordinary boom sticks.

On the 6th May at 10 a. m. the undersigned, being of opinion that it was desirable to take testimony, opened the hearing in the Koochiching County courthouse at International Falls. All the parties who were present the preceding day and hereinbefore mentioned appeared, with the addition of Mr. George A. Graham, representing the Rainy River Navigation Co., and Mr. Samuel J. Chapleau. The following were sworn and gave their testimony: G. S. Giles, E. W. Backus, Col. Potter, Samuel J. Chapleau, Capt. Black, and Fred Smith, of Laurel, Minn.

The following is a synopsis of the essential parts of the evidence:

The object of the boom is to collect, handle, and sort timber which is driven down the Big Fork, Little Fork, and Black Rivers. This timber consists of pulp wood for the mills at International Falls and Fort Frances belonging to and operated by the Ontario and Minnesota Power Co., of which Mr. Backus is the president, and the logs for the following sawmills: One mill of the International Lumber Co. at International Falls, one mill at Spooner, Minn., and one mill at Keewatin, Ontario, belonging to the Keewatin Lumber Co., all of which belong to or are controlled by the Backus interests.

The mill of the Engler Lumber Co. and of the Rat Portage Lumber Co. and of divers similar mills on the Rainy River, all belong to independent companies and stationed below the boom.

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At a previous hearing at International Falls on the 17th of September, 1912, another company, operating a mill at Spooner, the Shevlin-Mathieu Lumber Co., was represented by counsel, but this mill was subsequently purchased by the Backus interests.

In his testimony Mr. Backus gave the following information:

The reasonably full capacity of the mills of the International Lumber Co. is approximately 200,000,000 feet of sawed lumber per annum. There would be cut this year at International Falls 80,000,000 feet of lumber, at Spooner 60,000,000, and at Keewatin 40,000,000. Besides this, the consumption of pulp wood for the pulp mills at International Falls and Fort Frances is at their present capacity 160,000 cords per annum. This wood is brought in from various directions by all the railroads entering International Falls, and also a large portion is put into the streams, the Little Fork, Big Fork, and Black Rivers, and driven into the Watrous Island Boom Co.'s boom and there hoisted and brought back by rail.

The method of handling this boom is to bring all of the logs and pulp wood into the boom, take out all the pulp wood, if possible, and what logs are necessary to come to International Falls sawmill and haul them back by rail to the mills at International Falls and Fort Frances, both sawmills and pulp mills. The logs belonging to the mills lower down the river are then released and they float down to the other mills.

There is other timber collected in the boom, such as ties, cedar poles and posts, which come down these rivers and after being released go down the Rainy River to a point lower down than the end of the boom. Mr. Backus estimated the total number of feet of logs for the collecting and sorting of which the boom was used at an average of 125,000,000 feet of saw logs and approximately 50,000 to 60,000 cords of pulp wood, besides ties, poles, posts, etc., and the average value at $3,000,000. He also stated that the investment in mills and in timber by the companies which used this boom for the transportation of logs down the river either to the mills or to the place of loading them on cars is $20,000,000. Within the last four or five years the lumbering operations on the Rainy River have increased to a very considerable extent, especially since the paper mills began operating in the summer of 1910.

It was also established by Mr. Backus that the total acreage of the boom, 305.3 acres, is barely sufficient for the handling of the timber supplying the mills.

The undersigned crossed to Fort Frances and visited the partly constructed mill at that point. When completed, this large establishment will employ a great number of hands and turn out a large product.

Two witnesses were examined in relation to the navigation of the Rainy River.

There is no doubt that before the Canadian Northern Railway was built the Rainy River formed an important link in the chain of navigable waters, which stretches from the head of Lake Superior to the Lake of the Woods, and served as a highway for travelers and freight. In fact, the undersigned were able to gather from what they heard during their visit to this section of the country, and from evidence given before them in the matter of the levels of the Lake of the Woods, on a previous visit, that prior to the construction of the railway there was considerable traffic up and down the Rainy River, but although there was some difference of opinion upon the point at

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the hearing on the 6th of May, the undersigned can state that the great weight of evidence goes to show that there is very little traffic at the present time upon the river, and that the carrying of passengers by boats is almost exclusively restricted to the carriage of tourists. The witness, Fred Smith, who had been in the steamboat business himself, swore that after the building of the railway his company persevered in running their boats for two years, but that this was done at a constant loss and that the shareholders, who had had to contribute toward the expenses for these two years, finally decided to give up; the undersigned saw one of the boats high and dry on the shore, where it has been lying ever since and gradually falling to pieces.

It appears to the undersigned that the predominant interests in the Rainy River are the lumbering interests, and although they do not express the opinion that the navigation interests are to be neglected, still, the immediate future of the country around International Falls on the American side, and Fort Frances on the Canadian side, seems to depend to a great extent upon the progress and prosperity of the lumber and pulp mills.

It appears from the evidence of Mr. Giles, Col. Potter, and Mr. Chapleau that the first map filed by the applicants with their application did not correctly represent the boom as built in the river, that certain representations and suggestions had been made by the Dominion Government, and that these suggestions had been, to a great extent, if not wholly, carried out in the amended plan filed and in the reconstruction or correcting of the boom in the river.

Upon this point Mr. Giles says:

Q. Were those changes indicated on the small map the only changes which have been recommended by the department of public works?—A. They were the changes that were asked for by the department of public works of Canada.

Q. And the only changes?—A. And the only changes they asked for. From piling No. 27, I think it was, to a certain distance up the river they asked us to remove, and they wanted the sheer boom removed at the Laurel Dock, and that has been done, and the piling in the channel that they wanted to be removed. The only thing that has not been done is the dredging of the channel, and the removing of those stone piers that you saw, of the sheer boom down there, which we have marked on the map "to be removed."

As already stated, during the visit on the previous day, Capt. Black admitted that corrections and improvements in the boom had been made, and he concurred with the others present that if other slight corrections and improvements were made the objections of the navigation interests to the boom would disappear.

There were three points at which it was at first suggested that some changes might be made in the interests of navigation, viz, at a point opposite lots 1 and 2 of section 30, lot 2 of section 25, and at a point about 600 feet east of Watrous Island.

Col. Potter and Mr. Chapleau were examined as to the corrections or improvements which should be made at these points. In relation to the first point, viz, lots 1 and 2, section 30, Col. Potter says:

The river is narrow. It is a straight reach, and there is no difficulty in navigating through it. The only question, as I understand it, is the possibility of having to turn in it. You could not operate the boom and give them room to turn in there, therefore the 10, 15, or 20 feet that would be taken away from the boom company would be of no advantage to navigation and might hamper the boom company a little; that would be my opinion, at that point.

Q. Would that mean that there is no way of allowing these people to turn their boats there at all—that they would not be able to stop if it was necessary to turn at

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that point?—A. They would have to go below and turn around, and run up, if they happened to want to make a landing at that one particular point. At that particular point the boom company couldn't operate and give the steamers a chance to turn; they would have to go below anyhow; and the little additional width that you could give them without seriously hampering the boom company would not help them enough to pay to have it done, in my opinion.

As to the next point, opposite lot 2, section 25, Col. Potter says:

I think that is a bad bend for the steamers, and a bad bend for the lumber interests. But in my opinion the lumber interests could get along by redriving those clusters of piles—those two that are out—50 feet nearer the south shore, and it would be a help to the navigation people in making that bad bend, against an upriver wind as we had yesterday.

Coming then to the third point, viz, the outlet of the boom about 600 feet east of Watrous Island, Col. Potter says:

In my opinion a change could be made there without injuring the boom company at all; because they have an outlet from their boom into the river, which is a flaring outlet, for which there is no reason, and they have got the same width down here that they have at the outlet. They could take the logs out just as easily, and a very small change there would give the steamboats the whole of that 11-foot channel. By moving the last pier in about 50 feet would make a width of opening practically the same to them, and would give the navigation interests all of the 11-foot channel.

Mr. Chapleau, speaking of the first objection relating to the narrowness of the channel opposite lots 1 and 2, section 30, when asked if, in his judgment, any change could be made in the clusters of piles that would not seriously interfere with the transportation of logs through the boom, answers:

I do not think it is necessary in the interests of navigation at that particular stretch for the reason that if the clusters were moved over it would not be of any aid to boats passing through there. They have plenty of width there and plenty of water.

Q. Yes, but if they had to turn around, then they wouldn't have plenty of room, would they?—A. It is within such a short distance that they could either go above or drop below and turn.

Q. In other words, they could not maintain a boom at all if you gave room enough for boats to turn at this particular point?—A. No; it would be too congested.

In relation to the second point, viz, lot 2, section 25, Mr. Chapleau says:

It seems to me that that is a very narrow turn there, and pretty hard to negotiate either going up or coming down the river. At the same time it is very hard to get logs around a place like that. I should imagine they would be required to keep a force of men there during the driving and as they would be required to have men there I should say it would be much to the advantage of navigation to give them all the width they can get, although it might require to have men there at certain times of the drive.

Q. Col. Potter stated that if these two piles immediately opposite lot 2, section 25, were driven 50 feet further in than indicated on this map, that would be practically all that the interests of navigation would require, and that it would not seriously interfere with the operation of the boom. Do you acquiesce in that opinion?—A. Yes, sir.

As to the third objection, Mr. Chapleau suggested that the three cribs and two pile clusters at the outlet of the boom be moved in toward the Minnesota shore about 80 to 100 feet. When Mr. Chapleau made this statement, Col. Potter interjected—

I had not seen the map when I testified. I would say that that outer pier might be put in 75 feet with advantage to navigation and not hurt the log driving.

When the two engineers had been heard the chairman inquired:

Have any of you gentlemen any questions that you desire to ask Col. Potter or Mr. Chapleau?

Mr. GRAHAM. No; the points I was going to speak about you have covered with these gentlemen's testimony.

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Capt. Black, who was afterwards examined, traversed the same ground as had been gone over by the engineers and was examined as to the three objections, and after giving his testimony upon these points, the following question was put to him:

Q. That would remove practically all of the objections, then, on the part of the navigation interests?—A. Yes, we couldn't ask for much more, because they have behind it very shallow water and where there is no water there is no use for the boats to try to run.

Q. Do I understand you to say that the only objection which remains is the narrow space which is left between the Canadian shore and the boom at the first cross on the map—Exhibit A?—A. Yes, at lots 1 and 2.

Q. That is the only objection that remains now, practically?—A. Yes, and that can be overcome by the boats running either above or below before turning.

There is nothing to show that the boom itself caused any obstruction or diversion of the waters of the Rainy River on either side of the line affecting the natural level or flow of boundary waters on the other side of the line, viz, on the Canadian side, but it is in evidence that the operation of the works might, if, for instance, a jam occurred, have that result or effect. The dredging of the channel at the spot indicated would alter or lower the level of the stream.

When all the witnesses had been examined, the chairman said:

Have any of you gentlemen anything further to offer? If there is nothing further, the hearing is closed.

None of the parties present offered any evidence or remarks, and consequently the proceedings were declared to be at an end.

It will be noticed that neither Government nor any of the interests were represented by counsel, although, as hereinabove stated, notices had been duly given of the proceedings.

The objections urged on behalf of the Government of Canada in the statement in response to the application filed by Mr. John Thompson, as hereinabove mentioned, may be summarized under the following headings:

1. The plan filed with the application does not show the true location of the boom as constructed.
2. The international boundary not yet having been settled, it is impossible to say within what jurisdiction the boom will lie.
3. The soundings in the river are incomplete, and therefore it is not possible to say where the boom should be placed, having regard to the interests of navigation.
4. The boom is in some places so constructed as to leave no room for steamers navigating on the river to turn.
5. The dredging proposed will alter the level of the water.
6. It should, however, be possible to conciliate the different interests in the river.

The undersigned, after having heard the evidence and visited the ground, can safely say that the objections raised by the Government have been met, and that, in the words of the last paragraph of the statement in response, it is "possible to allow the applicants privileges in the river so as not to unduly interfere with navigation."

CONCLUSIONS.

The undersigned have come to the following conclusions:

1. Whether the international boundary follows the center of the stream or the center of the channel, the boom is almost completely built in American territory.

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2. The existence and the maintenance of this boom is necessary for the carrying on of the chief industry on both sides of the river in the district, viz, the manufacture of lumber, wood pulp, and paper.

3. The district on both sides of the Rainy River is vitally interested in the progress and prosperity of the manufacturing concerns above mentioned.

4. Although at one time there may have been a good deal of necessary navigation on the Rainy River, in consequence of the building of the railway, circumstances have completely changed, and the paramount consideration now to be taken into account is its utilization as a highway to carry logs and timber for the different mills and factories at International Falls and elsewhere.

5. Provided certain changes were made in the construction of the boom and the channel dredged, it was admitted on all sides that the navigation of the river would not be seriously interfered with.

6. The boom was built before any authorization was obtained from the Dominion Government, but upon representations being made to the applicant the construction of the boom has been changed so as to meet the requirements of the department of public works of Canada.

RECOMMENDATIONS.

Under these circumstances the undersigned recommend:

1. That the changes suggested by Col. Potter and Mr. Chapleau be made in the construction of the boom, viz:

(*a*) Immediately opposite lot 2 of section 25, by removing four clusters of piles and driving them 50 feet nearer the south shore;

(*b*) That the three cribs and two pile clusters at the outlet of the boom be moved in toward the Minnesota or south shore 75 feet; and

(*c*) That a channel 2,800 feet long, 50 feet wide, and 8 feet deep be dredged by the company at the place and in the manner shown upon the map or plan filed as Exhibit A,[1] this channel to be maintained at the same length, width, and depth by the company as long as the boom remains in place, or until such time as the Governments of both countries have decided otherwise.

2. That the applicant be given a reasonable time, say six months, within which to carry out these changes and works.

3. That upon the joint report of Col. Potter and Mr. Samuel J. Chapleau, or other officers appointed by the respective Governments, that the said works have been satisfactorily carried out, the commission grant the company's application and approve of the works.

The undersigned submit with the present report the evidence taken by them at International Falls and the exhibits.

Montreal, 21st May, 1913.

TH. CHASE CASGRAIN.

Winona, 29th May, 1913.

JAMES A. TAWNEY.

[1] Exhibit A on a scale of 300 feet to 1 inch has been filed with the decision.

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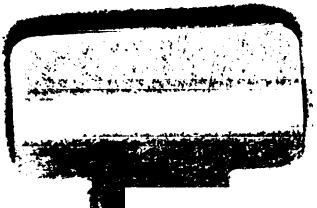

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